United States Court of Appeals

for the Second Circuit

APPENDIX

75-7518

75-7679

B

United States Court of Appeals

FOR THE SECOND CIRCUIT

TELEDYNE INDUSTRIES, INC.,

Plaintiff-Appellee,

against

ODIF PODELL, SIMON SRYBNIK, NICHOLAS ANTON, SAUL WALLER,

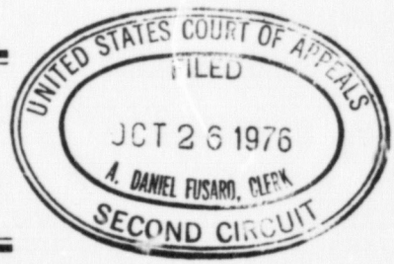
Defendants-Appellants,

and

EON CORPORATION and KERNS MANUFACTURING CORP.,

Defendants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK



JOINT APPENDIX
(Judgment after Trial)
Volume I
(Pages A1 to A602)

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Attorneys for Defendants-Appellants
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New York, N. Y. 10022

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Attorneys for Plaintiff-Appellee
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New York, N. Y. 10005

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DOCKET ENTRIES

CIVIL DOCKET

UNITED STATES DISTRICT COURT

JUDGE KNAPP ~~JUDGE BAUMAN~~

Jury demand date:

72 CR. 3261

D. C. Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
TELEDYNE INDUSTRIES, INC.	For plaintiff:
	BREED, ABBOTT & MORGAN
	1 CHASE MANHATTAN PLAZA,
AGAINST,	N.Y.C. N.Y. 10005
EON CORPORATION, ODIF PODELL, SIMON SRYBNIK, NICHOLAS ANTON, SAUL WALLER, AND KERNS MANUFACTURING CORPORATION	For defendant: Adler & Stone
	230 Park Avenue
	NYC 10017
	689 3737 (Kerns Mfg.)
	Feldshuh & Frank [illegible] Odif Podc
	Simon Srybnik, Nicholas Anton, Saul Wal
	144 East 44th Street, NYC 10017
	MU 7 8930
	Feldshuh & Frank
	144 East 44th St, NYC 10017 Mu7-8930
	for Eon Corp. (subsituted 4-2-73)

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed X	Clerk		8/31/72	Breed C.	15 —	
			8/31/72	45 Bm		15 —
J.S. 6 mailed ✓	Marshal					
Basis of Action: —	Docket fee					
~~FRAUD, CONSPIRACY~~ $2,000,000	Witness fees					
Action arose at:	Depositions					

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Docket Entries

72 CV 326

DATE	PROCEEDINGS	Date Ord. Judgment
Jul31-72	FILED COMPLAINT. ISSUED SUMMONS.	
Jul 31-72	Filed Affidavit & order by Charles M. Mitchell requesting that Donald L. Price and Thomas p. McCloy be permitted to serve process in the above action. So Ordered. Livingston, Clerk.	
Aug 9 72	Filed pltff's request for production addressed to Eon Corp.	
Aug 18.72	Filed Summons and ~~xxxshaixxxnexxx~~& proof of service.	
Aug 23.72	Filed Dft. Kerns Mfg. Corp., Notice to take deposition.	
Aug.23.72	Filed Dft. Kerns Mfg. Corp., Notice to Admit.	
Aug 23.72	Filed Dft. Kerns Mfg. ANSWER.	A&S
Aug 28.72	Filed ANSWER of Dfts. Odif Podell, Simon Srybnik, Nicholas Anton, Saul Waller.	F&F
Aug 28.72	Filed ANSWER of Dft. Eon Corp.	F&F
Sep 11.72	Filed Pltff's request for production addressed to Kerns Mfg. Corp.	
Sep 11.72	Filed Pltff's request for production addressed to Odif Podell.	
Sep 11.72	Filed Pltffs. request for production addressed to Simon Srybnin.	
Sep 11.72	Filed Pltffs. request for production addressed to Nicholas Anton.	
Sep 11.72	Filed Pltffs. request for production addressed to Saul Waller.	
Sep 11.72	Filed Pltffs. request for production addressed to Eon Corp.	
Sep 28.72	Filed Pltff Responses Def Inc ~~xxxx~~ answer to requests for admission.	
Oct 4.72	Filed Pltffs. Reply to counterclaim of dft. Eon Corp.	
Oct 10.72	Filed Response to pltff's request for production on behalf of dfts. Simon Srybnik, ~~xxxx~~ Nichalas Anton, Saul Waller & Odif Podell.	
Oct 10.72	Filed response to pltff's request for production addressed to Eon Corp.	
Oct 11.72	Filed Pltff. Notice of taking deposition upon Eon Corp.	
Nov.3-72	Filed stipulation and order extending plaintiff's time to answer or object to interrogatories to 12/4/72. So ordered. Lasker, J.	
Dec.1-72	Filed notice to take Deposition upon oral Examination of E.J.Icorand.	
Dec.1-72	Filed Notice to take Deposition of Robert Walck.	
Dec.27-72	Filed Pltff Nocice to take deposition upon oral examination.	
Dec.27-72	Filed Pltff Notice to take deposition upon oral examination.	
DBc.27-72	Filed Pltff Notice to take deposition upon oral examination.	
Jan.10-73	Filed Pltffs Notice to take deposition upon oral examination.	
Jan.10-73	Filed Pltffs Notice to take deposition upon oral examination.	
Feb.13-73	Filed Notice of Motion Ret.2/16/73 at 9:30 AM in ROOM 705 re: compel inspection.	
Feb.13-73	Filed Memorandum of Law insupport of motion.	
Feb.21-73	Filed stipulation and order adjourning plaintiff's motion now ret. 2/16/73 to 3/16/73. So ordered. Bauman, J.	
mar.7,73	Filed deposition of Robert Walck, taken on behalf of pltf.	
Mar.7,73	Filed deposition of Eugene B. Walper, taken on behalf of pltf.	
Mar.13,73	Filed stip and order pltf. motion ret. 3/16/73 adjourned until Mar.30,73. BAUMAN, J.	
Mar.19,73	Filed notice of cross-motion on behalf of defts Podell, Srybnik, Anton and Waller, ret. March 30, 73 at 9:30a.m. Room 705Re; Summary Judgment.	
Mar.19,73	Filed memo os law in support.	
~~Mar22-73~~	~~Filed stip and order extending~~	
Mar 30-73	Filed stip and order that pltffs motion is adjourned to 5/4/73, So Ordered Bauman J.	
Apr2-73	Filed Consent to Change atty for deft Eon Corp. BAUMAN,J. (mn)	
Apr 23-73	Filed Pltff's memo in opposition to cross-motion for partial summary judgment	
Apr 26-73	Filed Pltff's counter-statement under rule 9(g).	
May 4-73	Filed stip and order that the pltff's motion and the individual defts' cross-motions are hereby adjourned to 5/18/73, So Ordered Bauman J.	
Sep.26-73	Filed deft. Kerns Manufacturing notice of motion for admission, to strike complaint, etc. Ref. Oct.5-73. & Motion to dismiss.	
Sep.26-73	Filed deft, Kerns memo of lawin support of motion to dismiss.	

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Docket Entries

72 Civ.3261
TELEDYNE INDUSTRIES, INC. -v- EON CORP., et al

D. C. 110A Rev. Civil Docket Continuation — Page 2

DATE	PROCEEDINGS
Sep.28-73	Filed Stip and Order adjourning deft. Kerns Manufacturing motion until Oct. 19-73. BAUMAN,J.
Oct. 24-73	Filed memo endorsed on motion by deft. Kerns filed 9-26-73-Motion withdrawn-So ordered-Bauman,J.
Oct. 19-73	Filed stip. & order of discontinuance as to deft. Kerns Manufacturing Corp. with prejudice--Bauman,J.
Mar. 20-74	Filed deposition of Harold W. Rouse
Mar. 20-74	Filed deposition of Homer Coleman
Mar. 20-74	Filed deposition of Teledyne Indust. by W. A. Anderson
Mar. 20-74	Filed deposition of Nicholas Anton.
3-20-74	Filed continued deposition of Nicholas Anton
3-20-74	Filed deposition of Simon Srybnik
3-20-74	Filed deposition of Odif Podell
Mar. 20-74	Filed deposition of Saul Waller
Mar. 20-74	Filed reply memorandum of law on behalf of individual defts. Odif Podell,et al
Mar. 20-74	Filed OPINION #40,482---Defts' motion for summary judgment dismissing the action is denied. Pltff's motion to compel the inspection of documents is granted except as to the materials sought in paragraph (6) of its original request. It is so ordered--Bauman,J.-mailed notice.
Jun.27-74	Action reassigned to Knapp,J.
SEPT.17-74	Filed transcript of record of proceedings, dated 7/15-16-17-18/74
Nov.7-74	Filed deposition of Nicholas Anton, held on 11-21-72. m/n
Jul.15-74	Before Knapp,J. NON-JURY TRIAL BEGUN.
Jul.16-74	Trial continued.
Jul.17-74	" "
Jul.18-74	" "
Jan.13-75	" "
Jan.14-75	" "
Jan.15-75	" "
Jan.16-75	" "
Jan.17-75	" "
1-20-75	" "
Jan.21-75	" "
Jan.22-75	" " & concluded. Decision reserved.
Mar.11-75	Filed pltff's post-trial brief.
Mar.17-75	Filed Transcript of record of proceedings dated Jan. 13,14,15,16,1975
Mar.17-75	Filed " " " " " " " 17,20,21,22 1975.
04-21-75	Filed defts.' post-trial memo. of law.
05-07-75	Filed Pltff's post-trial reply brief.
08-01-75	Filed Opinion #42095: Ordered that judgment be entered on behalf of the pltff. against each of the deft's in the sum of $227,448.90 with interest as indicated. Judgment is to be submitted within five days of the filing of this opinion. The foregoing constitutes the court's findings of fact & conclusions of law as required by rule 52,F.R. of C.P. So ordered. Knapp J. m/n
08-08-75	Filed OPINION # 42095- defts. motion to reargue...denied. Knapp,J.m/n

Docket Entries

72 Civ.3261
TELEDYNE INDUSTRIES,INC. VS. EON CORPORATION ET AL

DATE	PROCEEDINGS Dg.3	Date Judgm
08-08-75	Filed JUDGMENT#75.670.Pltff recover of defts .Podell,Srybnik,Antons Waller, sum of $297,448.90,etc.Knapp,J.JUDGMENT ENT.Clk.Ent.8/11/ (mn)	
08-14-75	Filed Defts.Order to Show Cause with Temporary Restraining Order: to execute upon or enforce judgment of Court ret.Rm.506, 8/21/75,9:30 A.M.Stewart,Jr,	
08-14-75	Filed Defts Post-Judgment Memorandum of Law in support of Order to Show Cause.	
08-18-75	Filed Affdvt of Kenneth Alleyne of personal service of Order to Show Cause with Temporary Stay&Support Affdvt&Deft's Post Judgment,Memorandum of Law upon upon Breed,Abbott&Morgan,Esqs. on 8/14/75,4:30 P.M.	
08-20-75	Filed Pltff's affdvt&Notice of motion re: order altering or amending judgment to increase amt of damages awarded pltff. ret.9/19/75,2:00 p.m.	
08-20-75	Filed Pltff's Memorandum of law in support of motion to increase amt of damages awarded pltff.	
08-21-75	Filed Memo-endorsed on deft's show cause order filed 8-14-75 Re: Judgment: Adjourned to Sept. 2-1975, at 4:P.M.Owen,J.	
08-21-75	Filed affidavit of C.MacNeil Mitchell in opposition to deft's motion for temporary stay.	
08-21-75	Filed pltff's post-judgment memorandum in opposition to motion for temporary stay.	
09-02-75	Filed stip & order that pltff. is stayed, pending the determination of deft's appeal to the USCA, from enforcing or attempting to enforce said judgment by execution or otherwise. Owen,J.	
09-04-75	Filed deft's notice of appeal to the USCA from final judgment ent. on 8-8-75. Mailed copies to Breed,Abbott & Morgan.	
09-04-75	Filed deft's notice of appeal to the USCA from final judgment entered on 8-8-75 . Mailed notice to Breed,Abbott & Morgan.	
9-18-75	Filed Stip. & Order re: certain supplemental findings of fact. Knapp,J.	
09-22-75	Filed affidavit of R. Weinberger in opposition to pltff's motion Re: damages.	
09-22-75	Filed deft's memorandum of law in support of motion for a new trial.	
10-22-75	Filed deft's affidavits & notice of motion to vacate judg. ret.10-31-75.	
10-24-75	Filed stip & order that motion ret.9-26-75 adj. sine die, made ret. on 10-31-75. Knapp,J.	
10-31-75	Filed affidavit of H.W.Rouse in opposition to motion for a new trial	
10-31-75	Filed pltff's memorandum of law in opposition to deft's motion for a new trial.	
11-05-75	Filed additional affidavit of R.R.Macdonnell in support of defts motion for a new trial.	
11-05-75	Filed Memorandum & Order # 43327: All motions before me are denied, & any outstanding stay is vacated. So ordered. Knapp,J. m/n	
11-21-75	Filed Defts Affdvt&Notice of motion vacating judgment previously entered ret.12/5/75.	
11-21-75	Filed Defts'Memorandum in support for a new trial.	
12-04-75	Filed deft's reply memorandum.	
12-04-75	Filed pltff's memorandum of law in opposition to deft's motion for a new trial.	

Docket Entries

Civ 3261 Teledyne Industries, Inc. vs. Eon Corp. et al

DATE	PROCEEDINGS Page #4
12-03-75	Filed deft's O.Podell, S.Srybnik,N.Anton & S.Waller notice of appeal from order denying deft's a new trial. Mailed notice to Breed,Abbott & Morgan.

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SUMMONS

(Caption of Action)

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO. 3261

JUDGE BAUMAN

TELEDYNE INDUSTRIES, INC.

Plaintiff,

v.

EON CORPORATION, ODIF PODELL, SIMON SRYBNIK, NICHOLAS ANTON, SAUL WALLER and KERNS MANUFACTURING CORP.,

Defendants

SUMMONS

To the above named Defendants:

You are hereby summoned and required to serve upon:

BREED, ABBOTT & MORGAN, ESQS.

plaintiff's attorneys, whose address is:

BREED, ABBOTT & MORGAN
One Chase Manhattan Plaza
New York, New York 10005

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

JOHN LIVINGSTON
Clerk of Court.

E.A. BECKER
Deputy Clerk.

Date: July 31, 1972

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

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COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TELEDYNE INDUSTRIES, INC.	:	
Plaintiff,	:	
-against-	:	
		72 Civ.
EON CORPORATION, ODIF PODELL, SIMON SRYBNIK, NICHOLAS ANTON, SAUL WALLER and KERNS MANUFACTURING CORP.,	:	COMPLAINT
Defendants.	:	72 CIV. 3261
		JUDGE BAUMANN

Plaintiff, TELEDYNE INDUSTRIES, INC. ("Teledyne"), by its attorneys, BREED, ABBOTT & MORGAN, for its complaint herein, alleges:

FIRST CAUSE OF ACTION

1. (a) Plaintiff is a California corporation, with its principal place of business in Los Angeles, California.

(b) Defendant, EON CORPORATION ("Eon"), is a New York Corporation, with its principal place of business in Brooklyn, New York.

(c) Defendant, ODIF PODELL ("Podell") is a natural person residing in Pleasantville, New York.

(d) Defendant, SIMON SRYBNIK ("Srybnik"), is a natural person residing in the City, County and State of New York.

(e) Defendant, NICHOLAS ANTON ("Anton"), is a natural person residing in the State of New York.

(f) Defendant SAUL WALLER ("Waller"), is a natural person residing in Glen Cove, New York.

(g) Defendant, KERNS MANUFACTURING CORP. ("Kerns"), is a New York corporation, with its principal place of business in Long Island City, New York.

2. (a) This Court has jurisdiction of this action under 28 U.S.C. § 1332, in that it is between citizens of different states, and the matter in controversy exceeds $10,000, exclusive of interest and costs.

(b) Venue is proper in this Court under 28 U.S.C. § 1391(a).

3. At all times material herein:

(a) Podell was Chairman of the Board of Directors and treasurer of Eon.

(b) Anton was a director and president of Eon.

(c) Waller was a director and secretary of Eon.

(d) Srybnik was a director of Eon and, as of May 22, 1971, was the beneficial owner of 2,657,913 shares of the Common Stock of Eon. By reason of said stock ownership, which contitutes 45.18% of Eon's issued and outstanding stock, Srybnik dominates and controls Eon and its Board of Directors, and the Board takes such action as Srybnik may determine and dictate.

(e) Kerns, as of May 22, 1971, owned of record 12.53% of Eon's outstanding voting shares and also held notes of Eon in the principal amount of $276,043. Srybnik owns and con-

trols a majority of Kerns' issued and outstanding stock and is Chairman of its Board of Directors.

4. On or about June 20, 1969, Eon, through its American Marc Division, was awarded a multi-year contract by the U.S. Army (the "Army Contract"), under which Eon was to manufacture and deliver to the Army a quantity of generator sets during each of two "Program Years".

5. On or about April 1, 1970, Eon went into default on bank loans in the principal amount of $765,375, and had no reasonable prospect of refinancing such loans; Eon was virtually insolvent. Its net income had declined from $181,295 in 1968 to a net loss of $763,334 in 1971.

6. Srybnik, as the beneficial owner of 45.18% of Eon's issued and outstanding stock, was faced with the loss of his entire investment in Eon. Accordingly, on or prior to May 1971, Srybnik joined and conspired with each of the other defendants herein, and they devised and adopted a plan and scheme to obtain, through fraud and deceit, sufficient funds to preserve and protect Srybnik's substantial investment in Eon and permit him to realize a profit on said investment.

7. In pursuance of, and in order to effectuate said plan and scheme, defendants conspired to induce plaintiff:

(a) To enter into a subcontract with Eon for a portion of the remaining generator sets required to be delivered by Eon to the Army under Eon's Army Contract;

(b) To permit Eon to remain as the prime contractor

with the Army so that Eon would receive all funds under the contract directly from the Army; and

(c) To permit Eon to act as trustee for the benefit of plaintiff with respect to all funds received by Eon under the Army Contract, which funds were to be deposited by Eon in a special account for the exclusive purpose of reimbursing plaintiff for all amounts due plaintiff under the subcontract.

8. To induce plaintiff to enter into said subcontract with Eon, defendants stated, represented and warranted that:

(a) the amount remaining to be paid to Eon by the Army under the Army Contract with respect to generator sets to be manufactured and delivered by plaintiff under the subcontract exceeded plaintiff's total subcontract price; and

(b) Eon had clear and unencumbered title to certain inventory, tooling and work-in-process then on hand at Eon's premises, and that such inventory, tooling and work-in-process could be utilized by plaintiff in manufacturing the generator sets under the subcontract.

9. Said statements, representations and warranties were false, in that in truth and in fact:

(a) Eon's receipt of progress payments under the Army Contract had already reduced the balance to be paid thereunder with respect to generator sets to be manufactured and delivered by plaintiff under the subcontract to an amount less than plaintiff's total subcontract price; and

(b) Eon did not have clear and unencumbered title

to the inventory, tooling and work-in-process, and such items were subject to a lien on behalf of the Army as a result of its progress payments to Eon.

10. Said statements, representations and warranties were known by defendants to be false, and were made by them to induce plaintiff to enter into said subcontract with Eon and to purchase said inventory, tooling and work-in-process which was subject to said lien.

11. Plaintiff, in reliance on said statements, representations and warranties, entered into a subcontract with Eon, evidenced by Purchase Order No. M-1257, dated May 12, 1971, wherein plaintiff contracted to manufacture and deliver a portion of the remaining generator sets to the Army under the Army Contract, for a total subcontract price of $1,586,800.80.

12. Plaintiff, in further reliance on said statements, rerpesentations and warranties, purchased from Eon, at a cost of approximately $379,000, certain inventory, tooling and work-in-process, which Eon, to the extent of at least $221,000, had previously billed to the Army, which sum the Army had in fact paid.

13. Plaintiff has duly performed under the terms of said subcontract, and has invoiced Eon in the total amount of $1,315,720.80 of which $721,720.80 remains unpaid. Additionally, plaintiff is holding the remaining generator sets to be delivered under the subcontract which, when invoiced to Eon, would increase plaintiff's invoices thereunder by $271,080.

14. In furtherance of the plan and scheme alleged in paragraph 6, defendants caused and directed Eon to refuse and fail to pay invoices duly submitted by plaintiff under the subcontract, and instead caused and directed Eon to utilize a substantial amount of the funds received under the Army Contract for defendants' personal gain and profit.

15. Defendants, as co-conspirators, did the acts and things herein alleged, and all of such acts and things were participated in and done by all of the defendants, or by one or more of them in behalf of the others.

16. By reason of defendants' fraud and deceit, as hereinabove alleged, plaintiff has sustained substantial damage.

SECOND CAUSE OF ACTION

17. Plaintiff incorporates by reference the averments contained in Paragraphs 1 through 7, and 13 hereof.

18. Prior to execution of the subcontract between plaintiff and Eon referred to in paragraph 11 above, plaintiff knew it could not look to the general credit of Eon for payment of the very substantial amounts that would become payable to it under the subcontract.

19. Accordingly, the subcontract provided that Eon would deposit all sums it received under the Army Contract for generator sets manufactured by plaintiff in a special account; that plaintiff's invoices under the subcontract would be paid from said special account; and that Eon would not withdraw any

funds from said special account until all invoices submitted by plaintiff had been paid in full.

20. As a consequence of said terms of the subcontract, fiduciary duties and obligations were imposed on Eon for plaintiff's benefit, and all funds received by Eon under the Army Contract were held in trust for plaintiff.

21. Defendants, for their personal gain and profit, with full knowledge of the fiduciary relationship between Eon and plaintiff, caused and directed Eon to divert substantial sums from said special account, thereby causing Eon to commit breaches of trust and acts of conversion with respect to plaintiff's property.

22. By reason of the foregoing, plaintiff has sustained substantial damage.

WHEREFORE, plaintiff prays:

(1) That judgment be granted plaintiff under the First Cause of Action in the amount of $1,000,000, together with interest;

(2) That judgment be granted plaintiff under the Second Cause of Action in the amount of $1,000,000, together with interest;

(3) That punitive damages be assessed against defendants in the amount of $1,000,000;

(4) That the Court grant plaintiff such other and further relief as it may deem just.

Dated: New York, New York
July 31, 1972.

BREED, ABBOTT & MORGAN

By _____
A Member of the Firm

Attorneys for Plaintiff
Office and P. O. Address
1 Chase Manhattan Plaza
New York, New York 10005
Tel.: (212) 944-4800

ANSWER OF KERNS MANUFACTURING CORP.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

TELEDYNE INDUSTRIES, INC.,

Plaintiff,

-against-

EON CORPORATION, ODIF PODELL, SIMON SRYBNIK, NICHOLAS ANTON, SAUL WALLER, and KERNS MANUFACTURING CORP.,

Defendants.

Index No. 72 Civil 3261

ANSWER

----------X

Defendant, KERNS MANUFACTURING CORP., for its answer to the complaint states:

FIRST: Denies having any knowledge or information sufficient to form a belief as to each of the allegations contained in sub-paragraphs "(a)", "(c)", and "(e)" of paragraph "1" of the complaint.

SECOND: Denies each and every allegation contained in sub-paragraph "(d)" of paragraph "3" of the complaint, except admits that SIMON SRYBNIK was a director of EON CORPORATION.

THIRD: Denies having any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs "4" and "5" of the complaint.

FOURTH: Denies each and every allegation contained in paragraphs "6", "7", "8", "9", "10", "11" and "12" of the complaint.

FIFTH: Denies having any knowledge or information sufficient to form a belief as to the allegations contained in paragraph "13" of the complaint.

SIXTH: Denies each and every allegation contained in paragraphs "14", "15" and "16" of the complaint.

SEVENTH: Denies each and every allegation contained in paragraph "17" of the complaint, except as herein before admitted.

EIGHTH: Denies having any knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "18", "19" and "20" of the complaint.

NINTH: Denies each and every allegation contained in paragraphs "21" and "22" of the complaint.

WHEREFORE, defendant, KERNS MANUFACTURING CORP., respectfully demands judgment dismissing the complaint with costs and disbursements.

Dated: New York, New York
August 18, 1972.

ADLER & STONE

By /s/ SEYMOUR STONE
A Member of the Firm

Attorneys for defendant,
KERNS MANUFACTURING CORP.
Office and P.O. Address
230 Park Avenue
New York, New York 10017
(212) 689-3737

ANSWER OF DEFENDANTS PODELL, SRYBNIK, ANTON AND WALLER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TELEDYNE INDUSTRIES, INC.	ANSWER OF DEFENDANTS ODIF PODELL, SIMON SRYBNIK, NICHOLAS ANTON SAUL WALLER
Plaintiff,	
- against -	
EON CORPORATION, ODIF PODELL, SIMON SRYBNIK, NICHOLAS ANTON, SAUL WALLER and KERNS MANUFACTURING CORP.,	72 Civ. 3261
Defendants.	

Defendants, ODIF PODELL, SIMON SRYBNIK, NICHOLAS ANTON, and SAUL WALLER, for their Answer to the Complaint:

1. Deny knowledge or information as to the allegations contained in paragraph of the Complaint marked 1(a).

2. Admit the allegations contained in paragraphs of the Complaint marked 1(b), (c), (d), (e), (f) and (g).

3. Deny each and every allegation contained in paragraphs of the Complaint marked 2(a), (b) and all the paragraphs and subparagraphs thereof, numbered 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 20, 21, 22.

4. Deny each and every allegation contained in paragraph 3 and all the subparagraphs thereof of the Complaint except admit that Defendant ODIF PODELL was a Chairman of

the Board of Directors and a Treasurer of EON: that Defendant NICHOLAS ANTON was a Director and President of EON: the Defendant SAUL WALLER was a Director and Secretary of EON and the Defendant SIMON SRYBNIK was a Director and Stockholder of EON and that KERNS MANUFACTURING CORP. ("KERN") was a Stockholder of Record as of May 22, 1971, and also a creditor of the Defendant EON and admit that Defendant SIMON SRYBNIK owns a majority of the outstanding shares of KERNS and is Chairman of the Board of said corporation.

5. As to paragraph 4 of the Complaint, admit that EON entered into a contract with an agency of the United States but refers to said contract as to its provisions and legal effect.

6. Deny each and every allegation referred to in paragraph 17, except as otherwise admitted or denied.

7. Deny each and every allegation contained in paragraph 18 of the Complaint, except allege that the Defendant EON, through its AMERICAN MARC DIVISION, issued a purchase order bearing number "P.O. No. M-1257" dated May 11, 1971, to TELEDYNE CONTINENTAL MOTORS, a division of TELEDYNE INDUSTRIES, INC., for the purchase of generator sets and refers to the purchase order and the amendments thereto with respect to its meaning and content and with respect to its provisions for payment.

AFFIRMATIVE DEFENSE

8. The Complaint does not set forth the causes of action upon which relief can be granted.

WHEREFORE, Defendants ODIF PODELL, SIMON SRYBNIK, NICHOLAS ANTON and SAUL WALLER demand judgment dismissing the Complaint herein and judgment upon its counterclaim in the amount of $31,000.00 together with appropriate interest.

Dated: New York, N. Y.
August 24, 1972

Yours etc.,

FELDSHUH & FRANK

s/ Sidney Feldshuh

A Member of the Firm
Attorneys for Defendants
PODELL, SRYBNIK, ANTON and WALLER
Office & P. O. Address
144 East 44th Street
New York, New York 10017
Tel. (212) 637-8930

ANSWER OF EON CORPORATION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TELEDYNE INDUSTRIES, INC. Plaintiff,	ANSWER OF DEFENDANT EON CORPORATION
- against -	72 Civ. 3261
EON CORPORATION, ODIF PODELL, SIMON SRYBNIK, NICHOLAS ANTON, SAUL WALLER and KERNS MANUFACTURING CORP., Defendants.	

Defendant EON CORPORATION, for its Answer to the Complaint:

1. Denies knowledge or information as to the allegations contained in paragraphs of the Complaint marked 1(a), (g).

2. Admits the allegations contained in paragraphs of the Complaint marked 1(b), (c), (d), (e), (f).

3. Denies each and every allegation contained in paragraphs of the Complaint marked 2(a), (b) and all the paragraphs and subparagraphs thereof, numbered 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 20, 21, 22.

4. Denies each and every allegation contained in paragraph 3 and all the subparagraphs thereof of the Complaint except admits that Defendant ODIF PODELL was a Chairman of

the Board of Directors and a Treasurer of EON; that Defendant NICHOLAS ANTON was a Director and President of EON; the Defendant SAUL WALLER was a Director and Secretary of EON and the Defendant SIMON SRYBNIK was a Director and Stockholder of EON; and that KERNS MANUFACTURING CORP. ("KERN") was a Stockholder of Record as of May 22, 1971, and also a craditor of the Defendant EON and admits that Defendant SIMON SRYBNIK owns a majority of the outstanding shares of KERNS and is Chairman of the Board of said corporation.

5. As to paragraph 4 of the Complaint, admits that EON entered into a contract with an agency of the United States but refers to said contract as to its provisions and legal effect.

6. Denies each and every allegation referred to in paragraph 17, except as otherwise admitted or denied.

7. Denies each and every allegation contained in paragraph 18 of the Complaint, except alleges that the Defendant EON, through its AMERICAN MARC DIVISION, issued a purchase order bearing number "P.O. No. M-1257" dated May 11, 1971, to TELEDYNE CONTINENTAL MOTORS, a division of TELEDYNE INDUSTRIES, INC., for the purchase of generator sets and refers to the purchase order and the amendments thereto with respect to its meaning and content and with respect to its provisions for payment.

AFFIRMATIVE DEFENSE

8. The Complaint does not set forth the causes of action upon which relief can be granted.

AS AND FOR A COUNTERCLAIM

9. At the in instance and request of the Plaintiff, the Defendant did sell to the Plaintiff certain equipment and did perform certain work at the agreed price and reasonable value of $31,000.00, which were delivered and accepted and received by the Plaintiff.

10. Plaintiff has failed and omitted to pay for same despite demand therefor.

11. By reason of the foregoing, Plaintiff is indebted to the Defendant in the sum of upwards of $31,000.00.

WHEREFORE, Defendant EON CORPORATION demands judgment dismissing the Complaint herein and judgment upon its counterclaim in the amount of $31,000.00, together with appropriate interest.

Dated: New York, N. Y.
August 24, 1972

Yours etc.,

FELDSHUH & FRANK

Sidney Feldshuh

A Member of the Firm
Attorneys for Defendant
EON CORPORATION
Office & P. O. Address
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REPLY TO COUNTERCLAIM OF DEFENDANT EON CORPORATION

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

TELEDYNE INDUSTRIES, INC.,	:	
Plaintiff,	:	
-against-	:	72 Civ. 3261-A.B.
EON CORPORATION, ODIF PODELL, SIMON SRYBNIK, NICHOLAS ANTON, SAUL WALLER, and KERNS MANUFACTURING CORP.,	:	REPLY TO COUNTERCLAIM OF DEFENDANT EON CORPORATION
Defendants.	:	

Plaintiff, TELEDYNE INDUSTRIES, INC., by its attorneys, BREED, ABBOTT & MORGAN, for its reply to the Counterclaim of Defendant, EON CORPORATION,

1. Denies each and every averment of Paragraph "11", and affirmatively avers that all indebtedness of Plaintiff to Defendant, EON CORPORATION, arising from the goods delivered to and accepted by Plaintiff was applied against the greater and offsetting indebtedness owing to Plaintiff by Defendant, EON CORPORATION, and described in the averments of Plaintiff's Complaint herein.

AS AND FOR AN AFFIRMATIVE DEFENSE
TO COUNTERCLAIM OF EON CORPORATION

2. The averments of the Counterclaim of defendant, EON

CORPORATION, fail to state a claim upon which relief can be granted.

Dated: New York, New York
October 2, 1972

Yours, etc.,

BREED, ABBOTT & MORGAN

By CHARLES H. MITCHELL

Attorneys for Plaintiff
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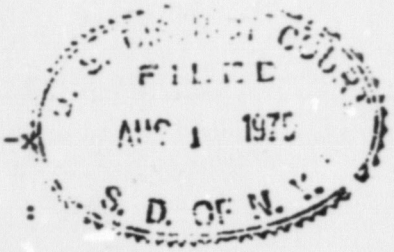
1 Chase Manhattan Plaza
New York, New York 10005
Tel.: (212) 944-4800

A 25

DECISION-OPINION OF KNAPP, D.J. #42895

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



TELEDYNE INDUSTRIES, INC.,

Plaintiff,

- against -

EON CORPORATION, ODIF PODELL, SIMON SRYBNIK, NICHOLAS ANTON, SAUL WALLER and KERNS MANUFACTURING CORP.,

Defendants.

OPINION

72 Civ. 3261

APPEARANCES:

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Attorneys for Plaintiff
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By: STEPHEN R. LANG, ESQ.
CHARLES M. MITCHELL, ESQ.
GEORGE F. VARY, ESQ.,
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FELDSHUH & FRANK
Attorneys for Defendants
144 East 44th Street
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By: SIDNEY FELDSHUH, ESQ.
RICHARD WEINBERGER, ESQ.
ALEXANDER T. WEST, JR., ESQ.,
Of Counsel

KNAPP, D.J.

This complicated diversity action was tried without a jury over a twelve-day period in part during July, 1974, and in part during January, 1975. The plaintiff, Teledyne Industries, Inc. (Teledyne), is a California corporation with its principal place of business in Los Angeles. It is seeking to impose liability on four individual defendants who are all directors and/or officers of Eon Corporation, a New York corporation with its principal place of business in Brooklyn. The reason behind this attempt to impose personal liability upon these defendants is that the corporation has become bankrupt.

The factual background to this action is fully set forth in District Judge Bauman's opinion denying the defendants' motion for summary judgment. Teledyne Industries, Inc. v. Eon Corporation (S.D.N Y. 1974) 373 F.Supp. 191. For reasons of clarity, however, as well as to comply with the mandate of Rule 52(a) of the Federal Rules of Civil Procedure, it seems necessary again to set forth the general factual framework underlying this dispute.

The Eon Corporation, founded in 1961, is engaged in the research, development and marketing of medical, nuclear, electronic and optical devices.[1/] In December, 1968, the company acquired what was called the American Marc Division, located in Inglewood, Californ

The division was engaged in the manufacture of diesel engines and electric generators. The head of the American Marc Division, and a significant participant in the dispute involved here, was M. James Leonard, who was also a vice president and director of Eon. Of the four defendants, Anton is president of Eon, Podell chairman of the board, Waller secretary, and [illegible]cybnik, both individually and through corporations under his control, the largest single shareholder. All are, and at the time of the events in question were, directors of Eon.

On June 20, 1969, Eon, through its American Marc Division was awarded a contract by the United States Army, No. DAA K01-69-C-A359, for the manufacture, production and delivery of 1.5 KW generator sets.[2/] The American Marc Division, however, had been unprofitable and the contract was insufficient to save it. Shortly after the contract's award Eon's board of directors decided to terminate manufacturing operations at the plant. Pursuant to this decision, Eon began to look for a subcontractor to fulfill its remaining commitments under the Army contract. Eon's interest in locating such a subcontrator was communicated by Leonard to one Eugene Wolper who, in turn, contacted Harold Rouse, a Teledyne vice president sometime in early May. Since Teledyne had submitted an unsuccessful bid to the government in March, 1971 to manufacture the same type of generator being manufactured by American Marc, it was not extraordinary that Rouse expressed interest in the deal. A meeting was arranged in Los

Angeles between Teledyne and Eon representatives for May 10, 1971.

The negotiations proceeded rapidly, and culminated three days later on May 12, with the signing of two contracts. Present during all or part of the negotiations was Leonard, Wolper, Rouse, and Homer Coleman, another Teledyne executive. Anton arrived in Los Angeles on May 12, and participated in the final discussions and execution of the agreements. The extent of Anton's participation in, and knowledge of, the negotiations is a critical issue in this lawsuit.

Two documents were executed by the parties on May 12. One was Purchase Order No. M-1257, the subcontract arrangement whereon Teledyne agreed to manufacture 4,372 generator sets at a unit price of $360, or a total contract cost of $1,573,920, and to deliver them according to the provisions in the original Army contract.[4/] The other was an inventory agreement[5/] which provided, in part, that Teledyne would purchase from Eon all of the generator set parts and material in Eon's possession as of August 31, 1971 which was in "reasonably good condition". Teledyne agreed to pay a price equal to 75 percent of the value of the inventory. In addition, Teledyne purchased tooling, gauges and other equipment needed to perform the subcontract from Eon for a price of $25,000.

As part of the contractual agreement, the parties also made certain arrangements for payment from Eon to Teledyne. A letter from Rouse to Leonard dated May 13, 1971, acknowledged and accepted by Leonard on May 25, 1971, speaks of the understanding in general terms:

> "Eon will arrange with Bank of America to hold funds received from 1.5 KW generator sales, covered on EON Purchase Order No. M-1257 in a special account, which will be used to pay TCM invoices. Mr. Leonard to confirm this, in writing, to exact arrangements, etc."

The arrangements were spelled out in a letter dated May 25, 1975 from Leonard to the Palos Verdes branch of the Bank of America.[7] The letter which is set out in full below,[8] provided that all funds received by American Marc from the sale of the generators would be held on deposit in a "special account." When the funds were received, the Bank would be directed to use those funds to pay the amounts of ~~kkx~~ Teledyne's invoices. The remainder in the account was to "be dispursed according to the direction of American Marc Division of EON Corporation." A copy of this letter was sent to both Rouse and Coleman, the latter to whom Leonard wrote on May 25, 1971:[9]

> ". . . [I have] arranged for the Bank of America to hold funds received from [the] generator sales in a special account which will be used to pay TCM [Teledyne] invoices. (See letter attached)"

Teledyne commenced production and delivery of the

generator sets in late 1971, and for a while the arrangement worked as planned. In the Spring of 1972, however, Eon ceased making its payments under the subcontract. The money received from the government from the sale of the generators was not paid to Teledyne but was used for other corporate purposes. On July 29, 1972 Teledyne commenced this action.

At trial, Teledyne sought to prove two separate theories of liability. First, it alleged that the four defendants had embarked upon a scheme to defraud Teledyne by inducing it to enter into a contract which they knew Eon lacked the means to perform. Specifically it charged that two fraudulent representations were made to Teledyne: (a) that the amount remaining to be paid to Eon from the government under the original contract was greater than the subcontract price; and (b) that Eon had clear and unencumbered title to the inventory, tooling and other equipment which Teledyne agreed to purchase. Secondly, Teledyne argued that the four defendants participated with Eon in breaching a fiduciary duty allegedly owed by Eon to Teledyne. Plaintiff's claim in this connection was that the Bank America special account had been established as part of the contract, that its purpose had been to insure the payment of Teledyne invoices, and that Eon had consented not to withdraw any funds from this account until Teledyne had been paid in full. It would follow, according to plaintiff's contention, that the subsequent diversion of these funds

by the four defendants for other corporate purposes constituted a breach of trust and an act of conversion.

The defendants, of course, vigorously contest these allegations. They maintain that no fraudulent misrepresentations were made in the negotiation of the Eon-Teledyne contract, and that the parties never intended to create any sort of fiduciary or trust relationship. Although the defendants acknowledge, as they must, that Eon did breach its contract with Teledyne, they deny personally engaging in any sort of conduct that would lead to the imposition of individual liability upon them for the breaches or torts of Eon.

I. Jurisdiction

As a preliminary matter, the defendants maintain that this court lacks jurisdiction to resolve the dispute between the parties. The defendants argue that the exclusive jurisdiction to determine the factual issues involved here exists solely with the bankruptcy court in the Eastern District of New York, the place where Eon has filed a petition for arrangement pursuant to Chapter XI of the Bankruptcy Act, 11 U.S.C. §701 et seq. This argument is, however, completely without merit.

The plaintiff commenced this action in July, 1972 against the four individual defendants, Eon Corporation, and another corporation, not here relevant, who was subsequently discontinued as a party.

In January, 1973, Eon filed a petition for arrangement in the Bankruptc court. On January 12, 1973 Bankruptcy Judge Price in the Eastern District signed an order staying all proceedings against Eon. Since that date, therefore, this action has involved only the plaintiff and the four individual defendants.

On March 13, 1974, Teledyne filed a proof of claim against Eon in the bankruptcy proceeding for the sum of $713,572.65. The proof of claim, which explicitly revealed Teledyne's intention to pursue the instant action here, indicated that the claimed indebtedness was for "goods, wares and merchandise sold and delivered to the Debtor [Eon] at the special instance and request of the Debtor." Subsequently Teledyne was listed as an unsecured creditor of Eon and took part in the arrangement. Judge Price confirmed the amended plan of arrangement in an order dated April 30, 1975.[10/]

Based on the foregoing undisputed chronology, the defendant contend that this court is foreclosed from resolving the issues involved in this litigation. They rely on the exclusive jurisdiction of the bankruptcy court over Eon, and, in the alternative, on the doctrines of res judicata or collateral estoppel. Both contentions must be rejected.

First of all, under the bankruptcy statute, the exclusive jurisdiction of the bankruptcy court extends only to the debtor, in this case Eon, and <u>its</u> property. 11 U.S.C. §711.[11/] In this action,

the plaintiff is seeking to impose liability on the individual defendants personally. The subject matter of this lawsuit is clearly not property in the actual or constructive possession of Eon. A judgment in favor of plaintiff will in no way affect Eon or its property, and obviously will not interfere with the bankruptcy court's order of arrangement.

Secondly, the stay issued by the bankruptcy judge with respect to Eon does not in the least affect thse proceedings. The power to enjoin lawsuits pursuant to 11 U.S.C. §714 [12/] is confined to actions in which the debtor is a party or in which the debtor's property is directly affected. Evarts v. Eloy Gin Corp. (9th Cir. 1953) 204 F.2d 712, cert. denied 346 U.S. 876; 8 Collier on Bankruptcy, §3.21 (14th Ed. 1971). As noted above, the instant action involves neither the debtor nor its property. Indeed, the bankruptcy judge himself in this case specifically refused to enjoin Teledyne's suit against the individual defendants.

The defendants' claim of res judicata or collateral estoppel must likewise be rejected. They argue that since Teledyne filed a proof of claim and proceeded as an unsecured general creditor in the bankruptcy proceeding, it should be estopped from now proving that the transaction between Teledyne and Eon was fraudulent or that a fiduciary relationship between the corporations existed. The defendants lay great stress on the fact that Teledyne did not seek to have Eon's

debt declared non-dischargeable pursuant to 11 U.S.C. §35(a),[13] a provision which releases a bankrupt from all of his provable debts except for eight specified categories of liabilities, one of which is a liability "for obtaining money or property by false pretense or false representations, . . . or for willful and malicious conversion of the property of another." 11 U.S.C. §35(a)(2). The defendants further rely on Bankruptcy Judge Price's order confirming the plan of arrangement for Eon Corporation[14] which reads in part as follows:

> ". . . and it appearing to the satisfaction of this Court that the provisions of said Chapter XI have been complied with and the said Amended Plan of Arrangement is for the best interests of all creditors and is feasible and that the said debtor has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to the discharge of a bankrupt, and that said proposal and its acceptance are in good faith . . ." (emphasis added).

The defendants' argument is, however, specious. As is now well-established, under the doctrine of res judicata, a final judgment rendered on the merits in a prior action involving the same parties or their privies bars a second suit based on the same cause of action. Lawlor v. National Screen Service (1955) 349 U.S. 322, United States v. General Electric Company (S.D.N.Y 1973) 358 F.Supp. 731. In order for the doctrine to apply all of its elements must be satisfied.

In this case, it seems clear that the doctrine is inapplicable. First of all, in the bankruptcy proceeding the parties

bound by Judge Price's order were Teledyne and Eon. The confirmation order only affects Eon's debts to Teledyne. It obviously can have no effect on any debts owed to Teledyne by the individual defendants. Secondly, in this lawsuit we are dealing with causes of action totally different than those which were at issue before the bankruptcy court. The function of a Chapter XI proceeding is to provide for an arrangement for the settlement, satisfaction, or extension of time of payment of the unsecured debts of a bankrupt. 11 U.S.C. §701 et seq. In that proceeding, Teledyne sought only to satisfy Eon's contractual obligation to it, the basis of the debt being Teledyne's invoices for "goods, wares and merchandise sold and delivered" to Eon.[15/] No issue of fraud, conversion or breach of trust was ever raised or litigated in that proceeding.

Furthermore, it is equally apparent that the doctrine of collateral estoppel has no bearing on the instant case. Under that doctrine, a prior judgment on the merits precludes relitigation of issues actually litigated and determined in the prior suit, regardless of whether it was based on the same cause of action as the second suit. Lawlor v. National Screen Service, supra, 349 U.S. 322. As noted above the issues of fraud, conversion or breach of trust were not even raised in the bankruptcy proceeding.

II. Choice of Law

Before turning to the merits of the case, a word about the

applicable law is in order. Klaxon Co. v. Stentor Electric Manufacturing Co. (1941) 313 U.S. 487 requires that federal courts sitting on diversity of citizenship cases follow the conflict of laws rules prevailing in the states in which they are situated. In New York, the courts have adopted "the grouping of contacts" approach to resolving choice of law problems in contract cases. In the landmark case of Auten v. Auten (1954) 308 N.Y. 155, 124 N.E.2d 99, the New York Court of Appeals explained that under this approach,

> "the courts, instead of regarding as conclusive the parties' intention or the place of making or performance, lay emphasis rather upon the law of the place 'which has the most significant contacts with the matter in dispute.'"

The merit of this approach is that it gives the forum having the most interest in the problem paramount control over the legal issues arising out of a particular factual context. Auten v. Auten, supra, 308 N.Y. 155, 161.

It would appear in this case that the state having the most significant contacts with the relationship at issue here is California. The contracts were negotiated entirely in California and executed there. Teledyne is a California corporation and, while Eon is a New York corporation, its American Marc Division is located in California and had its headquarters in Inglewood. Furthermore, it appears that the parties themselves intended that California law apply. Of the two documents executed on May 12, 1971 - the purchase

order agreement and the inventory agreement - the latter[16/] contains the following clause:

> "8. This contract is entered into in accordance with the law of the State of California and such law shall govern this contract."

Although the purchase order agreement is silent on the question of choice of law, it would not be unwarranted to assume, based on the above clause, that the parties intended California law to apply to their entire relationship.

III. Merits

A. Fraud

It is well settled in California, as in most other jurisdictions, that individual corporate directors and officers do not incur personal liability for the torts of their corporation "unless they participate in the wrong or authorize or direct that it be done." United States Liability Insurance Co. v. Haidinger-Hayes, Inc. (1970) 1 Cal. 3rd 586, 463 P.2d 770, 83 Cal. Rptr. 418. See, also Aeroglide Corporation v. Zeh (2d Cir. 1962) 301 F.2d 420, cert. denied 371 U.S. 82 Armour and Company v. Celic (2d Cir. 1961) 294 F.2d 432; 3 Fletcher, Private Corporations §1107 (rev. perm. ed. 1965). Thus, an officer or director will not be liable for torts in which he does not personally participate, of which he has no knowledge, or to which he has not consented. Penzner v. West American Finance Co. (1st Dist. Ct. App. 1932) 14 P.2d 810, subseq. opin. 133 Cal. App. 578, 24 P.2d 501. In addition,

a corporate officer or director will not be held responsible for the acts of lawfully appointed subagents. Central Mutual Insurance Company v. Schmidt (1st Dist. Ct. App. 1957) 152 Cal. App.2d 671 313 P.2d 132; California Civil Code Annotated §2351. While the corporation itself may be liable for such acts, the individual officer or director will be immune unless he authorizes, directs, or in some meaningful sense actively participates in the wrongful conduct.

In this case, the wrongful conduct alleged is that of fraud. In its broad, general sense, the concept of fraud embraces anything that is intended to deceive which results in injury to one who justifiably relies thereon. The elements of actionable fraud consist of (1) misrepresentation (false representation, concealment, or nondisclosure) of a material fact; (2) knowledge of the falsity of the representation; (3) intent to induce reliance; (4) justifiable reliance; and (5) resulting damage. See Pearson v. Norton (4th Dist. Ct. App. 1964) 230 Cal. App.2d 1, 40 Cal. Rptr. 634; Zinn v. Ex-Cello Corp. (1st Dist. Ct. App. 1957) 148 Cal. App.2d 56, 306 P.2d 1017. All of these elements must be present before fraud can be found and the plaintiff bears the burden of proving each and every element by a fair preponderance of the evidence.[17/] Sierra National Bank v. Brown (1st Dist. Ct. App. 1971) 18 Cal. App. 3d 98, 95 Cal. Rptr. 742. See, also, Babcock v. Omansky (2d Dist. Ct. App. 1973) 31 Cal. App.3d 625, 107 Cal. Rptr. 512.

There can be little doubt in this case that the plaintiff has succeeded in showing that fraud did in fact occur. The testimony of Rouse and Coleman - whom the court found to be truthful and credible witnesses - amply demonstrate that Leonard, while negotiating on behalf of Eon on May 10-12 made representations both with respect to the amount of funds remaining under the Army contract, and with respect to the inventory and tooling that were either intentionally false or misleading.[17a/]

The evidence indicates that both Rouse and Coleman were acutely aware of Eon's precarious financial condition, and realized that Eon would have no means to pay Teledyne pursuant to the [illegible] subcontract but for the monies remaining to be paid to Eon from the Army under the main contract. The Teledyne representatives therefore sought assurances from Leonard that the monies due Eon under the main contract would exceed the amount Eon would owe Teledyne under the subcontract. As Rouse and Coleman both testified, Leonard gave such assurances, despite the fact that he knew Eon had already been paid for work yet to be done through the receipt of "progress payments" from the government.[18/] As a result of these advance payments, the funds remaining available to Eon under the Army contract were approximately $400,000 less than the value of the subcontract as of May, 1971. Furthermore, this evidence clearly indicates that this information could have been obtained quite easily and speedily from documents

that were in Eon's possession at the time.[19] -

Leonard's other misrepresentation was more of a material omission rather than a false statement. As both Rouse and Coleman testified, and Rouse's "Daytimer"[20] corroborates, the Teledyne representatives also sought assurances that American Marc owned the inventory and tooling it sought to sell Teledyne. Teledyne had originally wanted to offset the purchase price of the inventory and tooling against payments to be due Teledyne for deliveries under the subcontract. However, when Leonard refused to do this, citing Eon's need for cash, Teledyne, relying on Leonard's representation that American Marc owned the tooling, and, of course, Leonard's representation that sufficient monies existed under the main contract, paid Eon in cash $196,859.16 for the inventory and an additional $25,000 for the tooling.

What Leonard had failed to tell the Teledyne representatives, although the evidence clearly shows that he knew of this fact, was that Eon had progress-billed on the inventory and tooling, thereby giving the government at least an interest in the equipment, and arguably even title.[21] Eon's 1971 Financial Statement, issued in February, 1971, clearly recognized that the problem of who owned title to the inventory existed when it stated in a footnote to its financial report that:

> "progress payments for government contract work have been offset against inventory as under the terms of the contract title to certain of the inventory is vested in the government. Offsets for 1971 and 1970 are $597,135 and $117,877 respectively."

Despite the recognition of the problem, however, the inventory agreement itself - drawn up after Leonard's assurance - in no way even hints that Teledyne may... purchasing encumbered property.

The fact that fraudulent misrepresentations were made, however, is of little avail to the plaintiff in this lawsuit, unless it can also show that each of the four individual defendants knew of, directed or authorized, or actively participated in the fraud. After carefully reviewing the evidence and weighing the credibility of the various witnesses, we find that plaintiff has not met his burden on this issue.

Based on the evidence at trial, the four defendants divide into two categories - Waller, Podell and Srybnik, on one hand, and Anton on the other.

As to the first three defendants, all New York directors, there is really no evidence beyond mere conjecture that they knew or participated in the fraud. None of these directors and officers took part in the Teledyne-Eon negotiations. None of them came to California during the critical three days in May. And there is no evidence whatsoever that they spoke to Leonard, their authorized representative,

by phone during that period. Plaintiff relies heavily on the fact that the subcontract arrangement was a matter of major importance to the Eon board, was frequently discussed among them, and that each obviously had a financial interest in completing the negotiations at any cost. However, more evidence than this would be required before a finding of fraud would be appropriate. As the evidence stands now, it would only be an act of unwarranted omniscience on the part of the court to summarily infer that these directors were aware of the misrepresentations that helped induce the contract.

As to Anton, the evidence is far more substantial. Anton, as president of Eon, was the chief operating officer of the company. During the May 10-12 negotiations, Leonard spoke to Anton over the phone concerning the discussions. And on May 12, Anton flew to California where he took part in the closing negotiations and executed the final documents. Furthermore, Rouse testified that he reviewed the points in his Daytimer, which included Leonard's two misrepresentations, in Anton's presence on May 12.

However, after considering all this evidence, we still must find that plaintiff has not met its burden of proving Anton's knowledge and participation. Here pertinent are Justice Curtis' words for a unanimous California Supreme Court in Hedden v. Waldeck (1937) 9 Cal.2d 631, 72 P.2d 114:

> "Actual fraud is never presumed but must affirmatively be established. The evidence must amount to proof of fraud, and where the circumstances of the transfer comport equally with the theory of honesty and fair dealing, fraud will not be found." (quoting from 12 Cal. Jur. P. 1057.)

We take these words not as a qualification of the legal principle that fraud may be proved by a simple preponderance of evidence, but as a recognition of the factual presumption that normal people do not lightly embark upon fraudulent conduct. Bearing that presumption in mind, we do not find that fraud has been brought home to Anton.

First of all, Anton himself vigorously denied any knowledge or participation in the fraud. While his credibility as a witness did leave much to be desired, it is apparent that his active role in the negotiations with Teledyne were minimal. He arrived in California on the afternoon of the last day, and took part only in the tail end of the discussions, after the detailed negotiations had been completed. Rouse's daytimer entries, while more than sufficient to establish Leonard's misrepresentations, give no clue as to how detailed and comprehensive the discussions were in Anton's presence. It is more likely than not, based on the time involved that these discussions were not very extensive, and that Rouse used the occasion primarily to highlight the points of agreement.

Although we have found Rouse to be a wholly credible witness, this does not gainsay the fact that he was interested in the outcome and would therefore tend to remember things important to his view of the case. With that background, the sparseness of his recollection of actual conversations with Anton becomes quite significant. We are therefore not convinced that Leonard's misrepresentations were made known to Anton.

Finally, on this point, we do not think we can assume that Leonard himself informed Anton about the misrepresentations. Leonard, it is clear from the evidence, was motivated by desires other than the best interests of Eon. He had been promised a cash bonus by the directors of Eon if he successfully subcontracted the contract Army/and wound up American Motors operations quickly. He might well have concluded not to jeopardize that bonus by telling Anton of any fraudulent misrepresentations that he had made. Furthermore, other evidence suggests that Leonard failed to disclose to the board of directors other aspects of the negotiations, particularly the arrangement whereby Wolper was paid a sales commission for his role in arranging the negotiations between Teledyne and Eon.[22/]

B. Breach of Trust and Conversion

It is well established in California that conversion "is any act of dominion wrongfully exerted over another's personal property in denial of or inconsistent with his rights therein."

Gruber v. Pacific States Savings & Loan Co. (1939) 13 Cal.2d 144, 148, 88 P.2d 137, 139; Zaslow v. Kroenert (1946) 29 Cal.2d 541, 176 P.2d 1; Poggi v. Scott (1914) 167 Cal. 372; 139 P. 815. The plaintiff must establish that he had possession or the right to immediate possession of the property at the time of the alleged conversion. General Motors Assistance Corp. v. Dallas (1926) 198 Ca. 365, 245 P. 184. The action may be maintained by a person who, although not in possession, has a special interest in the property giving him a right to possession at the time of the conversion. Pope v. National Aero Finance Co. (1st Dist. Ct. App. 1965) 236 Cal. App.2d 722. 46 Cal. Rptr. 233; Carvell v. Weaver (1st Dist. Ct. App. 1921) 54 Cal. App. 734 202 P. 897.

As Judge Bauman observed in his opinion in this case, 273 F.Supp. at 202, whether or not Teledyne possesses a special interest depends on the proper interpretation of the documents creating the special account. The plaintiff contends that Eon agreed to deposit all government payments in this account, and agreed that no monies would be withdrawn until Teledyne's invoices were paid in full. The defendants, on the other hand, acknowledge the existence of the special account, but maintain that it was never the intention to give priority to Teledyne's invoices or restrict the use of the account in any way. If the plaintiff is successful on this issue it seems clear that this would demonstrate

the requisite special interest suffucient to maintain an action for conversion. Similarly, if the testimony and documents are given the interpretation which plaintiff urges, it would also establish the existence of a fiduciary relationship. See, Teledyne v. Eon Corporation, supra, 373 F.Supp. 201 ; Twomey v. Mitchum, Jones & Templeton, Inc. (1st Dist. Ct. App. 1968) 262 Cal. App.2d 690; 69 Cal. Rptr. 222; Downey v. Humphreys (2d Dist. Ct. App. 1951) 102 Cal. App.2d 323, 227 P.2d 484.

There can be little doubt after considering the testimony adduced at trial that the evidence convincingly supports plaintiff's version of the intended purpose of the special account arrangement. To put it quite bluntly, no other explanation makes any sense whatsoever.

First, Rouse and Coleman both were concerned over Eon's ability to meet its financial obligations under the proposed sub-contract. They both knew that Eon's only source of income were the funds available under the Army contract, which they then thought were sufficient to meet Eon's obligations to Teledyne. The sole purpose in suggesting the special account was to inexorably link the Army's payment to Eon to Eon's payment of Teledyne invoices. It was therefore critical that Eon agree to pay Teledyne invoices first out of the funds deposited in this account. If it were

otherwise, that is, if defendants' version of the mechanics of the account were accepted, the existence of the special account would not only fail to give Teledyne assurance of being paid, it would not even materially ~~xxxx~~ enhance the probability of payment.

The documentary evidence further supports the view that the parties intended that Eon's use of the Army funds on deposit would be restricted first to the payment of Teledyne invoices only, and that any balance remaining would then be freed for other uses. Rouse's handwritten notes,[23] made on the days of his negotiations with Leonard, indicate that Teledyne was to be paid first out of the special account. Leonard's letter to the bank on May 25, 1971[24] states:

> "When the funds are received, the check will be deposited in the special account and the Bank will be directed to use the funds to pay the amounts of the invoices which were included in the payment check, directly to TCM by cashiers check. The balance in the account will be dispersed according to the direction of American Marc Division of EON Corporation."

Finally, plaintiff's version is supported by a letter from Leonard to Coleman, dated October 11. 1971,[25] wherein Leonard wrote:

> "We will pay you as we agreed and you have the largest bank in California acting as a monitor in your behalf . . ."

One may query, as did Judge Bauman, 373 F.Supp. at 200, what conceivable monitoring function could be performed if the account were

administered in the manner in which defendants contend.

Having concluded that Eon did undertake to act as a fiduciary on Teledyne's behalf, and that the plaintiff had a special interest in the special account, it is clear that the four defendants must be held liable in damages for both breach of trust and conversion.

There is no dispute that the four defendants authorized and did use the funds in the special account for purposes other than the payment of Teledyne invoices. The evidence clearly establishes that at the time of these conversions if not long before, both Anton and Srybnik, knew of the special account arrangement. It is also more probable than not that Podell and Waller knew of the restriction on the account. In any case, the knowledge and intent of the individuals is irrelevant in an action for conversion. As the California Supreme Court said in Poggi v. Scott, supra, 167 Cal. 372, 139 P. 815:

> "The foundation for the action of conversion rests neither in the knowledge nor the intent of the defendant. It rests upon the unwarranted interference by defendant with the dominion over the property of the plaintiff from which injury to the latter results. Therefore neither good nor bad faith, neither care nor negligence, neither knowledge nor ignorance are of the gist of the action."

IV. Damages

In this case, it would appear that plaintiff's damages for either breach of trust or conversion would be the same, that is, "the value of the property at the time of the conversion" California Civil Code §3336. See also California Civil Code §3333.

By the terms of the special account arrangement, as we have construed it, Teledyne obtained an interest in the monies received by Eon from the government which represented the exact invoices and amounts that were included in Eon's request for payment from the government. As the evidence demonstrates, there were two Army payments which the directors used for purposes other than the payment of Teledyne invoices. In April, 1972, Anton caused a check to be stopped which Leonard had prepared for his signature in the amount of $216,000[26/] which should have been paid to Teledyne. In addition, Teledyne received no payments out of the subsequent final Army payment of $81,448.90. Although it is unclear from the record what portion of this payment should have gone to Teledyne, it is our understanding that because of prior progress payments the amount was in fact less than the total of Teledyne invoices.[27/] Accordingly, the defendants will be jointly and severally liable for damages in the sum of $297,448.90, with prejudgment interest calculated from the dates on which Eon received funds from the government.

Conclusion

In summary, it is ordered that judgment be entered on behalf of the plaintiff against each of the defendants in the sum of $297,448.90 with interest as above indicated. Judgment is to be submitted within five days of the filing of this opinion.

The foregoing constitutes the court's findings of fact and conclusions of law as required by Rule 52, Federal Rules of Civil Procedure.

SO ORDERED.

Dated: New York, New York
July 29, 1975.

WHITMAN KNAPP, U.S.D.J.

FOOTNOTES

1/
Plaintiff's Exhibit #21

2/
Plaintiff's Exhibit #10.

3/
Plaintiff's Exhibit #3.

4/
The Army had agreed unde[illegible]e original contract to pay Eon a unit price of $392. Thus, Eon stood to earn $32 per unit by subcontracting to Teledyne.

5/
Plaintiff's Exhibit #5.

6/
Plaintiff's Exhibit #6.

7/
Plaintiff's Exhibit #8.

8/
"May 25, 1971

Bank of America
Golden Cove - Palos Verdes Branch
31176 Hawthorne Boulevard
Palos Verdes Peninsula, California 90274

Attention: Mrs. Fo[illegible] Guy

Dear Mrs. Guy:

American Marc Division of EON Corporation has issued P.O. No.M-1257 to Teledyne Continental Motors, 1000 Ryan Avenue, Walterboro, South Carolina to produce approximately 4000 generator sets.

Accordingly we have agreed to have all funds received by American Marc from the sale of these generator sets to the U. S. Government held in our special account which we have opened at the Bank of America for this purpose.

Teledyne Continental Motors' invoices will be sent to American Marc for generator sets as they are produced and shipped by TCM. American Marc will immediately invoice the U. S. Government for the units shipped.

American Marc will notify the Bank of America and TCM the exact invoices and amounts that have been included in the American Marc request for payment from the U. S. Government.

When the funds are received, the check will be deposited in the special account and the Bank will be directed to use the funds to pay the amounts of the invoices which were included in the payment check, directly to TCM by cashiers check. The balance in the account will be dispursed according to the direction of American Marc Division of EON Corporation.

We appreciate your courtesy extended to American Marc and TCM in this regard.

Sincerely,
AMERICAN MARC DIVISION
EON CORPORATION
/s/ M. J. LEONARD
M. J. Leonard
Vice President-General Manage

MJL:ir "

9/

Plaintiff's Exhibit #7.

10/

The final order of confirmation, dated April 30. 1975, was submitted to the Court by the defendants' attorney in the first week of July. During the trial, the Court had given the defendants permission to supplement the record by submitting any papers from the bankruptcy proceeding that they wished the Court to consider. Any such documents received will be placed in a folder and marked as Court's exhibit AAA.

11/

11 U.S.C. §711:

> §711. Exclusive jurisdiction of debtor and property
> Where not inconsistent with the provisions of this chapter, the court in which the petition is filed shall, for the purposes of this chapter, have exclusive jurisdiction of the debtor and his property, wherever located.

12/

11 U.S.C. §714:

§714. Stay of actions

The court may, in addition to the relief provided by section 29 of this title and elsewhere under this chapter, enjoin or stay until final decree the commencement or continuation of suits other than suits to enforce liens upon the property of a debtor; and may. upon notice and for cause shown, enjoin or stay until final decree any act or the commencement or continuation of any proceeding to enforce any lien upon the property of a debtor.

13/

11 U.S.C. §35(a):

§35. Dischargeability of debts - Debts not affected by discharge

(a) A discharge in bankruptcy shall release a bankrupt from all of his provable debts, whether allowable in full or in part, except such as (1) are taxes which became legally due and owing by the bankrupt to the United States or to any State or any subdivision thereof within three years preceding bankruptcy: Provided, however, That a discharge in bankruptcy shall not release a bankrupt from any taxes (a) which were not assessed in any case in which the bankrupt failed to make a return required by law, (b) which were assessed within one year preceding bankruptcy in any case in which the bankrupt failed to make a return required by law, (c) which were not reported on a return made by the bankrupt and which were not assessed prior to bankruptcy by reason of a prohibition on assessment pending the exhaustion of administrative or judicial remedies available to the bankrupt, (d) with respect to which the bankrupt made a false or fraudulent return, or willfully attempted in any manner to evade or defeat, or (e) which the bankrupt has collected or withheld from others as required by the laws of the United States or any State or political subdivision thereof, but has not paid over; but a discharge shall not be a bar to any remedies available under applicable law to the United States or to any State or any subdivision thereof, against the exemption of the bankrupt allowed by law and duly set apart to him under this title: And provided further, That a discharge in bankruptcy shall not release or affect any tax lien; (2) are liabilities for obtaining money or property by false pretenses or false representations, or for obtaining money or property on credit or obtaining an extension or renewal of credit in reliance upon a materially false statement in writing

respecting his financial condition made or published or caused to be made or published or caused to be made or published in any manner whatsoever with intent to deceive, or for willful and malicious conversion of the property of another; (3) have not been duly scheduled in time for proof and allowance. with the name of the creditor if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy; (4) were created by his fraud, embezzlement, misappropriation or defalcation while acting as an officer or in any fiduciary capacity; (5) are for wages and commissions to the extent they are entitled to priority under subdivision (a) of section 104 of this title; (6) are due for moneys of an employee received or retained by his employer to secure the faithful performance by such employee of the terms of a contract of employment; (7) are for alimony due or to become due, or for maintenance or support of wife or child, or for seduction of an unmarried female or for breach of promise of marriage accompanied by seduction, or for criminal conversation; or (8) are liabilities for willful and malicious injuries to the person or property of another other than conversion as excepted under clause (2) of this subdivision.

14/

See Court Exhibit AAA.

15/

See Court Exhibit AAA.

16/

Plaintiff's Exhibit #5.

17/

In McDonnell v. American Leduc Petroleums (1972). 456 F.2d 1170, the Second Circuit, citing a 1968 California District Court of Appeals case, stated that under California law, "fraud must be proved by 'clear and convincing evidence.'" 456 F.2d at 1176. The court however, qualified that statement in a footnote, indicating that since the parties had not raised the issue of whether there is a conflict between New York and California law as to fraudulent misrepresentation, it would not inquire further into the problem. In this case, the choice of law issue was squarely presented, and we are convinced by the Sierra National Bank case and the California Supreme Court cases cited therein, that fraud in California need only be proved by a fair preponderance of the evidence.

17a/

We should emphasize that, in the absence of a finding of specific misrepresentations, the Court would find that no fraud had been committed by any of the defendants.

The plaintiff has argued that all four directors knew or should have known at the time the contract was signed or, in the alternative, at the time Teledyne began to perform under the contract, that Eon Corporation could not meet its obligations under the contract in question.

After carefully considering the evidence on this point we find that plaintiff has not sustained its burden with respect to this issue. Even assuming that the directors knew that the value of the subcontract was greater than the value of the funds remaining under the main contract, it is certainly possible that they in good faith believed that other sources of income would be generated from Eon's other divisions as time went on. Furthermore, from the point of view of Eon's directors, there were several reasons why they might assume that Teledyne would accept an agreement with a high risk of non-payment. First Teledyne had itself bid for the same type of generator contract, and had been rejected. The subcontract would thus be a way for Teledyne to commence a relationship with the government that might prove financially beneficial in the future. Secondly, Teledyne's Walterboro plant was not being used to optimum capacity which might conceivably make it advisable to take work having a high risk of loss.

18/ Under the specific provisions of the Army contract, Eon was allowed to obtain from the United States Government 85 percent of its government-allowable costs in advance. These advance payments are commonly referred to as progress payments. The Government would then later pay Eon the remaining balance of fifteen percent of its costs, plus whatever additional monies were due on the selling price of the product shipped, delivered and accepted by the Government.

19/ See Plaintiff's Exhibit 19 and Tr. 934-939, as well as the testimony of Busillo.

20/ Plaintiff's Exhibit #1, at 11.

21/ Plaintiff's Exhibit #21.

22/ The defendants argue that Teledyne's payment to Wolper was in violation of the purchase order as well as United States Government rules and regulations, and therefore the action should be dismissed. We regard this argument as totally specious and insufficient in law. In any case, Leonard's participation in this arrangement, acting with actual and apparent authority from Eon, would foreclose this argument to the four defendants.

23/ Plaintiff's Exhibits #1 and #2.

24/ Plaintiff's Exhibit #8.

25/ Plaintiff's Exhibit #9.

26/ Plaintiff's Exhibit #31.

27/ If our understanding is incorrect, we will entertain a motion to amend this part of the judgment within five days of the filing of the opinion. The motion papers should include affidavits and exhibits on this point.

JUDGMENT

U.S. District Court
Filed
Aug 3, 1973
S.D. of N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

TELEDYNE INDUSTRIES, INC.,

Plaintiff,

-against-

EON CORPORATION, ODIF PODELL, SIMON SRYBNIK, NICHOLAS ANTON, SAUL WALLER and KERNS MANUFACTURING CORP.,

Defendants.

- x

JUDGMENT #75,670

72 Civ. 3261 (W.K.)

This action came on for trial before the Court, Honorable Whitman Knapp, District Judge, presiding, and the issues having been duly tried and a decision having been duly rendered,

It is Ordered and Adjudged that plaintiff, Teledyne Industries, Inc., recover of defendants, Odif Podell, Simon Srybnik, Nicholas Anton and Saul Waller, jointly and severally, the sum of Two Hundred Ninety-Seven Thousand Four Hundred Forty-Eight and 90/100 Dollars ($297,448.90), with interest at the rate of seven per cent (7%) as provided by law on the following:

(a) on Two Hundred Sixteen Thousand Dollars (216,000) from April 20, 1972, and

(b) on Eighty-One Thousand Four Hundred Forty-

Eight and 90/100 Dollars ($81,448.90) from June 16, 1972,

and its costs of action.

Dated: New York, New York
August 7, 1975.

Richard Knapp
U.S.D.J.

A TRUE COPY
RAYMOND F. BURCHARDT, CLERK
By L Harrison
Deputy Clerk

Judgment Entered - 8/8/75
Raymond F Burchardt
Clerk

A 59

NOTICE OF APPEAL

filed 9-5-75

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

TELEDYNE INDUSTRIES, INC.,

Plaintiff,

-against-

EON CORPORATION, ODIF PODELL, SIMON SRYBNIK, NICHOLAS ANTON, SAUL WALLER and KERNS MANUFACTURING CORP.,

Defendants.

----------x

72 Civ. 3261 (W.K.)

RECEIVED BY MAIL
SEP 8 1975
REFERRED TO

NOTICE OF APPEAL

Notice is hereby given that the individual defendants, ODIF PODELL, SIMON SRYBNIK, NICHOLAS ANTON and SAUL WALLER, above named, hereby appeal to the United States Court of Appeals for the Second Circuit from the Judgment dated August 7, 1975, entered in this action on the 8th day of August, 1975, in favor of the plaintiff, TELEDYNE INDUSTRIES, INC., against the said individual defendants.

FELDSHUH, WEINBERGER & DERFNER
Attorneys for Odif Podell,
Simon Srybnik, Nicholas Anton
and Saul Waller
144 East 44th Street
New York, New York 10017
(212) 687-8930

TO: BREED, ABBOTT & MORGAN
One Chase Manhattan Plaza
New York, New York 10005
Attorneys for Plaintiff
(212) 944-4800

mcs

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

TELEDYNE INDUSTRIES, INC., Plaintiff, vs. EON CORP., ODIF PODELL, SIMON SRYBNIK, NICHOLAS ANTON, SAUL WALLER and KERNS MANUFACTURING CORP., Defendants.	72 Civ. 3261

Before:

HON. WHITMAN KNAPP,
District Judge.

New York, July 15, 1974;
10.00 o'clock a.m.
(Room 1506)

APPEARANCES:

BREED, ABBOTT & MORGAN, Esqs.,
Attorneys for Plaintiff;
BY: CHARLES M. MITCHELL, Esq.,
GEORGE F. VARY, Esq., and
JONATHAN F. BANK, Esq., of Counsel.

FELDSHUH & FRANK, Esqs.,
Attorneys for certain defendants;
BY: SIDNEY FELDSHUH, Esq., and
RICHARD WEINBERGER, Esq., of Counsel.

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mcs

THE COURT: Mr. Feldshuh has a motion to amend the answer. Will you make your motion?

MR. FELDSHUH: May it please the Court, with regard to our colloquy just before we started these proceedings, your Honor, I wish to point out that in connection with Judge Bauman's decision that a prime issue not covered by Judge Bauman was and is the issue of illegality of this contract and the performance thereunder by Teledyne.

The purchase order, which will be a substantive document and which had been marked in the course of a deposition Defendants' Exhibit B for identification, that purchase order contains a provision, your Honor, which states that the seller is prohibited and barred from paying any commissions or finder's fees to anyone; that that constitutes a posture of illegality and taints the contract.

There is, equally so, may it please the Court, a provision and rule of the agency, the mobility command of the United States Government, to the effect that the payment of any commissions or finder's fees -- that that payment is absolutely prohibited.

Your Honor may recall some years ago a Senate investigation by the United States Senate which revealed

with regard to war contracts and the performance thereof a rather unholy situation of finders and commission people getting untold tens of thousands of dollars and it was in the atmosphere of that investigation and revelations that I respectfully submit the agencies of the United States, the procurement agencies, adopted this rule.

By the same token, with regard to this purchase order on the very first page of the purchase order in very legible print, as your Honor will see, there is a statement to the effect that all matter printed on the reverse side of that purchase order are part and parcel of the purchase order, and one specific provision prohibits the payment by the seller of any commissions or finder's fee.

My friend, Mr. Mitchell, has raised the question of whether or not pleading was necessary in this case, and I respectfully submit in that connection, may it please the Court, that in Oscanyan against W. R. Arms Co., 103 U. S. 261, the Supreme Court said very plainly and very specifically that the issue of fraud and illegality is not going to be subverted by doctrines of pleading. It went on and said that the Court sua sponte of its own effort and own recognition of the fact itself is bound to raise this issue in the performance of the due administra-

tion of justice.

The Court went on to elucidate further, and I now quote the following with regard to the assertion of a valid contract. The Court said:

"Whatever shows the invalidity of the contract shows that in fact no contract ever existed."

In viewing the contract as a corrupt one forbidden by public policy and morals:

"The objection to a recovery could not be obviated or waived by any system of pleading or even the express stipulation of the parties. It was an issue which the Court itself was bound to raise in the interest of the due administration of justice."

I respectfully submit, your Honor, in this connection that it will be an issue raised in this trial and again, sir, I state that the Court, sua sponte, must of its own motion take cognizance of it in accordance with the learning of Oscanyan.

I wish also, may it please the Court, to point out several issues that have not been touched upon by Judge Bauman and I might say too, sir, in connection with the pleading stage that we did not learn of the payment of this finder's fee and its specifics until the first deposition and long after the pleading stage had passed.

It may well be that on the occasion we should have come forward and asked for an amendment to the pleadings. However, I respectfully submit, in the atmosphere of this stricture, the fact that it was not done does not preclude it being raised at this time for the consideration of the Court and the action of the Court by itself.

There are additional --

THE COURT: Let's dispose of this first. Is that all you have to say on this?

MR. FELDSHUH: If your Honor wishes to regularize the situation, I will respectfully move, may it please the Court, for leave to amend the pleadings, the answer herein, by alleging --

THE COURT: What do you want to allege?

MR. FELDSHUH: I wish to allege that by reason of the admitted payment of commissions by the plaintiff Teledyne to one Mr. Walper, who was in a posture of a commission agent, broker or finder, said commissions being in the amount of some $20,000, that the payment thereof and the agreement by Teledyne to pay the sum, which agreement is in writing, by the way, your Honor, taints this contract to the extent that Teledyne is barred from any recovery thereunder.

I respectfully submit upon that ground there should be a dismissal of this complaint. That is the motion, your Honor.

THE COURT: The motion is to so amend the complaint and the position is even if I deny the motion I will be bound to take judicial notice of the invalidity if you have established it.

What is your position, Mr. Mitchell?

MR. MITCHELL: Your Honor, I have several apsects to my position. First of all, as I am aware at the present time, Mr. Feldshuh and his firm do not purport to represent Eon Corporation or its American Marc Division. Assuming, arguendo, that this particular provision which he cites applies, it would seem, first off, that it would provide a relied, if it provides any relief at all, which could be utilized only by Eon Corporation and its American Marc Division.

I think right off the bat there is a problem of standing to raise this type of defense.

Secondly, M. Feldshuh has indicated that he was aware by virtue of its being marked in the deposition of the so-called finder's fee arrangement between plaintiff and Mr. Walper. This was known, I believe, a year and a half ago, as I recall in September, the fall of 1971, when

these depositions were taken. At this point something could have been done in furtherance of Mr. Feldshuh's desire to amend the answer.

I think it is noteworthy that not even at the pretrial conference before Judge Bauman or at the recent conference in your Honor's chambers has Mr. Feldshuh brought this question up. Had he brought it up we would have had an opportunity to have further comments at this time on the matter. As it now stands, the matter is completely new to me, has not been developed at all in testimony on discovery, and I don't think, as I indicated before off the record, that it has any part in the case as it stands right now.

2 I think there may be other comments which I may develop on this point if I have an opportunity to explore it. I believe that Mr. Walper, the finder, was first retained by the American Marc Division of Eon Corporation to find a potential subcontractor. That is my present understanding although, of course, my statement is not testimony. I take it there is substantial in pari delicto involved in Mr. Feldshuh's proposed defense and I think that the time that such a defense could have been raised, perhaps under the very language which Mr. Feldshuh relies upon, is of its own terms past.

If anything, although I have not had a chance to analyze the language, I think it would have given Eon Corporation, an American Marc Division, an opportunity to obtain some form of relief at the outset and, again, that is hypothetical.

I don't mean to represent to the Court that they could have done this, but I am saying that it is my position this was the maximum that they would have been able to do and certainly at this stage I think they are foreclosed from doing anything.

That is my position, your Honor. I'm sure, if your Honor will further consider this and you want some sort of papers submitted, where we would have an opportunity to further analyze --

THE COURT: Your position, in substance, is that the defense is no good because it is a defense available, if at all, only to the non-defendant corporations.

MR. MITCHELL: That is correct.

THE COURT: And in the second place, you are surprised by the amendment and you think you are prejudiced by the surprise.

The first thing will be yes or no depending on what the facts and the law is. On the second, I reserve

decision. After the case is over we can see whether you were surprised in the sense -- obviously you are surprised. Whether you are surprised in the sense that you could have done anything about it can't be considered until I consider it under the Supreme Court case which he cites regardless of whether it was alleged.

MR. MITCHELL: I might add that there are, I believe, some 13 depositions which were taken in discovery of this case and obviously raising an issue at this point after discovery has been had would create an additional hardship.

Your Honor, I think, if I can characterize the result, both Mr. Feldshuh and our position is sufficiently on the record, and I would like to proceed.

THE COURT: Mr. Feldshuh has something else that he would like to put on the record.

Is that correct, Mr. Feldshuh?

MR. FELDSHUH: Yes, your Honor. I would with your Honor's permission, of course, just address myself to the in pari delicto comment that was made.

THE COURT: I have had enough on this question. We have the positions of the parties You can make the arguments after we have the evidence.

MR. FELDSHUH: With regard to the claim of fraud

by Teledyne, of course there will be a full development, may it please the Court, on the issue of reliance which we propose to interrogate on and submit to your Honor, and then with regard to the question of damages, of course there is a wide open area that your Honor will still have to deal with, and that is apart from the first motion that I made, so I merely bring to your Honor's mind that there are these additional issues.

THE COURT: Thank you.

You may proceed.

MR. MITCHELL: Your Honor, I would like to call Harold Rouse to the stand.

- -

HAROLD WAYNE ROUSE, called as a witness in behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MITCHELL:

Q Mr. Rouse, would you state your present address for the record, please?

A It is 1416 Rood Point Road, Muskegon, Michigan.

Q Would you state very briefly for the Court your educational background?

A I attended high school and also trade university, San Diego Community College, and also San Diego State College.

Q What were the dates of your graduation from these institutions?

A I am still working on my final points for my degree.

Q That is where?

A Right now I am doing some work in the Community College at Muskegon.

Q What degree is that?

A Industrial engineering.

Q When, Mr. Rouse, did you first engage in full-time occupation after school?

A In 1949.

Q Did there come a time when you were employed by Teledyne Continental Motors Division of Teledyne Industries, Inc.?

A Yes. In 1964 I was transferred from Ryan Aeronautical Company to Teledyne Continental Motors.

Q Is that spelled R-y-a-n?

A Right.

Q You say you were transferred. I assume they were of common ownership?

A Ryan bought the controlling interest of Continental Motors.

Q In 1964 was Teledyne Continental Motors a division of Teledyne Industries, Inc.?

A No, it wasn't.

Q To your knowledge did it later become so?

A Yes.

Q What was the date that it became that?

A In 1969.

Q During the time you have been in Teledyne Continental Motors Division, what positions have you held?

A I have held the position of Works Manager.

Q Do you recall the dawtes, the respective dates of holding that position?

A From 1964 through about 1967.

Q And subsequently?

A Vice-president of Operations from about 1967 to February of 1972.

Q So in May of 1971 were you engaged as vice-president of operations of Teledyne Continental Motors?

A That is right.

Q Where did you work out of?

A I worked out of Muskegon.

Q What were your responsibilities in this capacity?

A I was responsible for all the manufacturing operations in five different plants.

Q What were these plants and where were they located?

A They were Muskegon, Michigan; Chicago, Illinois; Mobile, Alabama; Panama City, Florida; and Walterboro, South Carolina.

Q What classifications of products was Teledyne Continental Motors making at this time, and I am referring to the time of May, 1971?

A We were making piston aircraft engines, Military truck engines and tank engines and commercial gasoline engines for industrial uses.

Q In the course of your responsibilities as vice-

president of operations at Teledyne Continental Motors, did you have occasion from time to time to participate in the negotiations of contracts or purchase orders on behalf of Teledyne Continental Motors?

A Yes, I did.

Q Prior to May of 1971 were you familiar with the production by Teledyne Continental Motors of a 1.5 kilowatt generator set?

A Yes. Early in the spring of 1971 we had bid on a Government invitation bid for a contract for roughly 2300 of these units, plus, we were also under contract with Food Machinery to produce a 4.2 KW generator set.

Q When you submitted a bid, was Teledyne Continental Motors successful in obtaining the contract?

A No.

Q As vice-president of operations, from time to time were you involved in negotiations concerning U. S. Government procurement contracts?

A Yes, I was.

Q Approximately what was the breakdown in May of 1971 between the U. S. Government and the commercial product lines which Teledyne Continental Motors was then engaged in manufacturing?

A Roughly 50/50.

Q Would it be a fair statement that approximately 50 per cent of the time you spent on operations was involed with operations concerning U. S. Government procurement contracts?

A Yes, that would be a fair statement.

Q In other words, was this 50/50 split-up, did that reflect your time spent as well?

A I would say yes, that was a good estimate.

Q To whom did you report in May of 1971?

A To Mr. G. L. Richardson, president of Teledyne Continental Motors.

Q Where physically was his office?

A In Detroit, Michigan.

Q What personnel reported to you at the same time?

A The plant managers of all the plants.

Q The five plants that you mentioned earlier?

A Yes.

Q Did there come a time, Mr. Rouse, when you learned of a possibility of subcontracting a certain quantity of 1.5 kilowatt generator sets in the area of May 1971?

A Yes.

Q How did you learn of this possibility?

A The director of plant operations of one of the plants in Muskegon had received a telephone call from a person by the name of Mr. Gene Walper.

Q Would you spell Mr. Walper's name?

A W-a-l-p-e-r.

Q Who was the person at Teledyne who indicated he received a telephone call from Mr. Walper?

A Mr. Don Enderle.

Q What was his position with Teledyne Continental Motors at the time?

A He was director of plant operations for the Market Street plant.

Q What subsequently occurred after you spoke with Mr. Enderle?

A Mr. Enderle gave me Mr. Walper's phone number and I in turn called Mr. Walper and talked to him.

Q Would you pinpoint this by date, if you can?

A It was on the evening of May 7, 1971.

Q I believe you stated that you called Mr. Walper.

A Yes.

Q How had you obtained his telephone number?

A From Mr. Enderle.

Q Had you personally been aware of a Mr. Gene Walper prior to Mr. Enderle's conversation with you?

A No.

Q Did Mr. Enderle indicate to you the name of the company which wished to subcontract?

A No.

Q And thereafter did you call Mr. Walper?

A Yes.

Q To the best of your recollection, what was the sum and substance of that telephone converstion? What did you say to him and what did he say to you?

A I told him I was returning his call that he had made to Mr. Enderle and that we understood that he knew of a company that wanted to subcontract roughly 4000 to 4500 1.5 KW generator sets, and he confirmed this.

I asked him what company it was and he said he couldn't tell me. He wanted to know if we were interested in it, and I said, "Yes, we thought we would be interested in it."

And he wanted to know if I could come to California to talk to him and the people involved in this company, and I said, "Well, yes, we probably could."

I asked him what his position was in relation to this company. He told me he had been retained by them to find someone to take over the -- for them to subcontract to, and I said, "Well, what do you get out of this thing?"

He said, "Well, for me to tell you who the company is and to arrange these meetings I will have to get a commission."

And so I asked him what the commission would be. He indicated it would be $5 a unit. I told him that I would check it out with my people and would get back with him the following day, which was on Saturday.

Q And thereafter did you check it out with your people?

A Yes, I talked to the president of the company. I explained the situation to him.

Q That was Mr. Richardson?

A Yes, Mr. Richardson, and he approved my pursuing the idea.

I called Mr. Homer Coleman, who is the plant manager of the Walterboro plant, and discussed it with him and we decided that, yes, we would like to pursue it, so on Saturday, then --

Q Let me interrupt you a second.

In connection with your telephone call to Mr. Walper, did you have occasion to ask him how he had chosen Teledyne Continental Motors as opposed to other companies?

A Yes, I did.

Q What did he say in response?

A He said that he knew we had bid on a previous IFB.

Q What is an IFB?

A It is an invitation to bid to the United States Government.

THE COURT: Had you bid on this contract? Did you ultimately find out?

THE WITNESS: No, sir, we had bid on a lesser quantity just a few months earlier.

Q Was the lesser quantity that Teledyne Continental Motors had bid on a few months earlier the same Federal stock number that Mr. Walter indicated that he wanted to find a subcontractor for?

A Yes, it was.

THE COURT: In other words, you had figured out the cost of making this particular item?

THE WITNESS: Right.

Q And you have indicated, I believe, that you called a Mr. Homer Coleman of the Walterboro plant of Teledyne Continental Motors; is that correct?

A Yes, that is right.

Q Why did you contact the plant manager of the Walterboro plant?

MR. FELDSHUH: Can we have Mr. Coleman identified?

THE COURT: He is the plant manager.

THE WITNESS: The plant manager of the Walterboro plant at that time in South Carolina.

THE WITNESS: What was the question?

MR. MITCHELL: I will rephrase the pending question.

Q Why did you have occasion to call Mr. Homer Coleman as opposed to another plant manager of Teledyne Continental Motors?

A The reason was in 1970 we had bought a product line of 300 amp generators from a company by the name of Rett in Detroit and at the same time we had acquired some of the test equipment and some of the tooling for the 1.5 KW generator set and this equipment was moved to the Walterboro plant.

In addition, Mr. Coleman was responsible to work up the material cost and the labor cost on the prior IFB that we had submitted earlier in the year.

Q You had submitted, you say, an IFB. Isn't it a fact that the company receives an IFB?

A That is right.

Q Could you explain exactly how the process goes with an IFB?

A What happens is anyone can put their name on a bidder's list with the Government for a certain product line and once you put your name on there any time there is a request for bid or an IFB that comes out they will automatically send you a copy of it.

THE COURT: You submitted an IFB, you said, and what you meant was that you submitted a bid in response to one of these IFB's; is that right?

THE WITNESS: Yes.

Q An IFB is a Government generated document as opposed to a company document?

A Yes.

MR. FELDSHUH: May I interrupt?

If there are witnesses in this courtroom who are being produced by Teledyne, the plaintiff, and if there is to be an issue of fact, may I respectfully request that those witnesses be excluded at this time from hearing the testimony of this witness? I didn't mind up to this point because I considered it preliminary, but I believe we are going into certain areas of the testimony which may touch on the fraud issue.

THE COURT: I have always felt that is a nonsensical procedure, but it is done in this court.

Do you object to excluding the witnesses?

MR. MITCHELL: If Mr. Feldshuh won't consider the additional point that the witnesses have independent recollections, I will be glad to accommodate him and exclude the witness whom I intend to call, Mr. Homer Coleman, whose testimony in many aspects will parallel and corroborate the testimony of Mr. Rouse.

I don't think the other witness' testimony will overlap substantially enough to fall within your request, Mr. Feldshuh.

I would go along with Mr. Feldshuh's request to have Mr. Homer Coleman, who is present, excluded during Mr. Rouse's testimony.

THE COURT: Show Mr. Coleman to the witness room.

The reason is all seemed to be an asinine procedure is because all the witnesses have had their depositions taken and have talked to each other.

MR. FELDSHUH: We have been doing this for so long --

THE COURT: I never understood it and I suppose I'm too old to learn.

MR. FELDSHUH: I just want to avoid any criticism, your Honor.

THE COURT: There is no criticism.

Q You say, Mr. Rouse, you spoke with Mr. Coleman on the phone; is that right?

A That is right.

Q Did you make any arrangements? What was the sum and substance of your conversation with Mr. Coleman?

A Are you speaking of the evening of May 7?

Q When you first contacted him with respect to this possible subcontract.

A I told Mr. Coleman that I wanted to check out the pricing that we had developed and I would call him back on Saturday and we would make arrangements about making the trip.

Q What did you mean by pricing?

A At that time where the company was organized, all the estimating for these IFB's was done in a central contract estimating department in Muskegon.

So, on Saturday I called those people in and I reviewed the last bid to determine the price which would be a fair price for us to negotiate for this procurement.

Q Was anything else involved in the conversation on the telephone with Mr. Coleman; did you discuss anything else?

A Following my checking out of the prices and everything I called him back and told him that everything had been

approved for us to go to California and he should make arrangements to arrive there on Sunday afternoon. I told him I would call Mr Walper and make arrangements for him to have breakfast with us at the International Hotel Monday morning, May 10.

Q That is 1971?

A That is right.

Q And thereafter did you contact Mr. Walper?

A Yes. I had previously contacted Mr. Walper prior to calling Mr. Coleman back.

Q And what further, if anything, was said in that telephone conversation with Mr. Walper?

A I simply told him that, yes, we were interested; that we would come to California and we would arrive on Sunday afternoon and we would like to meet with him on Monday morning. We would also like to meet with the principals of the other company on Monday morning.

THE COURT: You didn't know who the other company was yet?

THE WITNESS: No, sir.

Q Thereafter did you in fact go to California?

A Yes, sir.

Q What time did you arrive?

A Late in the afternoon on May 9th, Sunday after-

noon.

Q Was Mr. Coleman there or did he accompany you on the trip?

A Mr. Coleman met me at the hotel. He was there.

Q Was any discussion had that day, that is the 9th, with either Mr. Walper or any representative of American Marc Division of Eon Corporation concerning the subcontract?

A The best I can remember, no.

THE COURT: You mean the day he arrived in California?

MR. MITCHELL: That was my question, your Honor.

Q Did you in fact conduct a breakfast meeting the next morning, that is Monday morning, the 10th?

A Yes. Mr. Walper met us at the hotel and we had breakfast, the three of us, Mr. Coleman, Mr. Walper and myself.

Q Approximately what time was this in the morning?

A I would say it was around 8 o'clock.

Q Did anyone else participate at that time in your breakfast conversation?

A No.

Q What was said between you and Mr. Coleman, on the one side, and Mr. Walper, on the other, during this

breakfast meeting?

A We had general discussions about his call to me and about our interest in subcontracting this work, and he also explained the reason that he had contacted our company.

Q What reason was that?

A He stated because they knew that we had bid on a previous IFD and that they were looking for a very responsible, reputable company that was doing business with the United States Government to take over the contract.

Q Was anything else said at that time in your conversation?

A I can't remember all the conversation, but I'm sure there was a lot of general conversation.

Q Did anyone else thereafter join in the breakfast meeting?

A Yes. Just about the time we were finishing breakfast another gentleman joined us.

MR. FELDSHU: Fix the time of that, please.

Q Would you state the time?

A It was some time between 8.30 and 9 o'clock.

Q Did this person introduce himself?

A Yes. Mr. Walper introduced him to us.

Q What was the substance of that introduction?

THE COURT: Who was the person?

THE WITNESS: Mr. Jim Leonard.

Q Did Mr. Walper introduce him as Mr. Leonard?

A That is right.

Q Did Mr. Walper state who Mr. Leonard was or whom he represented?

A Yes, that he was vice-president and general manager of the American Marc Division of Eon Corporation. Also, Mr. Leonard told us then he was a director of Eon.

THE COURT: That is the first time you heard of Eon?

THE WITNESS: Yes, sir.

Q Was this the first time you had heard of American Marc Division?

A Yes, sir.

Q Approximately how long did Mr. Leonard, Mr. Walper, Mr. Coleman and yourself remain at that breakfast meeting?

A I would say approximately a half hour.

Q To the best of your recollection, what further conversations ensued during the time Mr. Leonard was there?

A Mostly it was just getting acquainted and him telling us a little bit about American Marc and that they wanted to subcontract this contract to us.

THE COURT: Did he tell you why he wanted to do

that?

THE WITNESS: Yes, he did.

THE COURT: What did he say about that?

THE WITNESS: He said that American Marc only had this one product line in their plant. They were in a very high rent area in Los Angeles and that their costs were becoming increasingly how and that they wanted to liquidate the company.

THE COURT: The company or the Division?

THE WITNESS: The Division. I'm sorry.

Q Did he state what was the present status of the contract under which American Marc Division was producing? Did he describe that contract?

MR. FELDSHUH: I think, your Honor, it is time that counsel stopped leading this witness.

THE COURT: He is not leading. He asked him whether he described the contract.

MR. FELDSHUH: He can ask what he said instead of that, what, if anything, did he say.

A He told us that they want to subcontract approximately 4500 units, which was the second year procurement.

Q Was any discussion of subcontract price had at that time?

A No.

Q To your recollection, were any other subjects or topics discussed at breakfast with Mr. Leonard?

A He stated that they had a line of diesel air-cooled engines that they had developed some years before and they were interested in also selling that line.

Q Did you understand Mr. Leonard to be referring to the 1.5 kilowatt generator set or to other types of generators when he said this?

A This was other types of engines, not generator sets.

Q Was there anything else that was discussed, to your recollection, at that point?

A Not at the breakfast meeting.

Q Did the meeting continue elsewhere?

A Yes.

Q Where was that?

A At the American Marc facility.

Q Did you proceed, after leaving breakfast, directly to the American Marc facility?

A Yes, we did.

Q Approximately what time did You arrive at the American Marc offices?

A Some time between 9 to 9.30 in the morning.

Q What happened when you arrived there, would you tell me, at the office?

A We went into Mr. Leonard's office and again we talked about the second year procurement; where they stood on the contract on the first year, and just a little bit in general about the contract.

Q When you state, Mr. Rouse, the first year procurement and second year procurement, what does that mean, to your knowledge?

A Well, in the contract that they had, which we saw later, it shows the delivery of so many units the first year and then the second year, so many units. It was a two-year contract.

Q Is it fair that what Mr. Leonard said to you was that he wanted someone to take over only the second year procurement and not the first year of procurement; is that correct?

A As we had the discussions, they had not finished all the first year production and we did have some conversations about the possibility of us taking over more than the second year, but because of the time span and the position where they stood on the first year, it was decided that we should only consider the second year.

THE COURT: I thought you said three years?

THE WITNESS: No, it was two years.

Q Who was present at Mr. Leonard's office during these discussions you are now referring to?

A Mr. Leonard, Mr. Walper, Mr. Coleman and myself.

Q I believe you stated at one point that you were shown the procurement contract which Mr. Leonard was referring to. Was that at this time, the time that you are now referring to?

A No, it was later.

Q So, at the time of this particular conversation that you are now describing, you had not seen the contract between the American Marc Division and the Government?

A That is right.

Q At this point, Mr. Rouse, did bargaining or negotiations take place as to negotiating the subcontract?

A No.

Q What did occur?

A We requested to take a plant tour; to go out and look at the units being produced. We went to the plant and went through the plant and talked to some of the people that were out there. He introduced us to some more people and this probably took about 30 to 45 minutes. He also showed us -- they had a few of the diesel engines that they had developed, which was a separate product line.

They had some of those sitting around.

Q What happened subsequent to the plant tour?

A We returned to the office and then we got into negotiations.

Q Did any negotiations take place in the course of the plant tour?

A No.

Q Approximately what time did you return to Mr. Leonard's office?

A It was probably some time close to 10 o'clock or so, maybe after 10, even.

Q Who was present in Mr. Leonard's office at this time, that is approximately 10 o'clock?

A Mr. Leonard, Mr. Walper, Mr. Coleman and myself.

Q Had all four of you been on this tour of the American Marc facility together?

A Yes.

Q To the best of your recollection, what discussion then ensued?

A One of the first things I did when I came back, I asked to make a telephone call.

Q I'm sorry. By coming back you mean back --

A Back to the office. Right after we returned to the office I asked to make a telephone call.

Q Did you in fact make a teleph one call?

A Yes, I did.

Q Where physically did you make the telephone call from?

A It was in another office.

THE COURT: They gave you privacy?

THE WITNESS: Yes.

Q Whom did you call?

A I called Mr. Gene Lewis.

Q Who is Mr. Lewis?

A Mr. Lewis at that time was our vice-president of finance.

Q You mean of Teledyne Continental Motors?

A That is right, in Muskegon.

Q What did you say to Mr. Lewis and what did Mr. Lewis say to you?

MR. FELDSHUH: The conversation took place in a private room out of the presence of Mr. Leonard, the vice-president of American Marc and a director of Eon Corporation. It is not binding.

MR. MITCHELL: May I address myself to that? I am offering this evidence to show Mr. Rouse's state of mind. I am not offering it for the substantive content of what Mr. Lewis told Mr. Rouse.

THE COURT: That evidence will be received.

MR. FELDSHUH: I stand on the objection.

THE COURT: Overruled.

THE WITNESS: Would you please restate the question.

Q What was the sum and substance of your conversation with Mr. Lewis? What to the best of your recollection did he say to you and you to him?

A Mr. Lewis was aware why I was in California, so I told Him that the company that we were involved with in this negotiation was Eon and that American Marc was a division of Eon, and I requested that he get a quick D & B.

THE COURT: Dun & Bradstreet?

THE WITNESS: To check on them, right, to find out how they stood financially.

Q Was that, in substance, the totality of your conversation with Mr. Lewis at this point?

A Yes. We had some just general conversation, but he said he would get on it.

Q Subsequent to the telephone conversation, what occurred?

A I returned to the room and we started negotiations.

Q Who on behalf of American Marc Division conducted negotiations?

A Mr. Leonard.

Q Who generally conducted negotiations on behalf of Teledyne Continental Motors?

A Myself.

Q Were these negotiations still in the presence of Mr. Walper and Mr. Coleman?

A That is right.

Q To the best of your recollection, in the best order you can recall them, what were the topics that were discussed?

THE COURT: What were the subjects?

THE WITNESS: Topics.

Q Topics.

A We discussed the unit price or the price for each generator set.

Q Are you referring to American Marc Division's unit price or are you talking about negotiating a unit price on the subcontract?

A I am talking about negotiating a price for the subcontract.

THE COURT: Did you know the price they had with the Government?

THE WITNESS: No. We asked him for a copy of the prime contract, and Mr. Leonard requested it be brought in. It was brought in by a gentleman by the name of Mr. Walck.

THE COURT: How do you spell that?

THE WITNESS: I think it is W-a-l-c-k.

And he did bring the prime contract to the room where we were and gave it to Mr. Leonard.

THE COURT: But you never saw it?

THE WITNESS: Mr. Leonard, in turn, looked at it and gave it to us and we looked at it and --

Q Who was Mr. Walck, by the way? Was he identified?

A At that time he was not identified to us.

Q Did you subsequently come to know who Mr. Walck was?

A Yes.

Q Who was Mr. Walck?

A The comptroller.

Q Of whom?

A American Marc.

THE COURT: Did this contract that you looked at give you the price that they were getting for them?

THE WITNESS: No, sir, the contract they gave us

had all the places where the price should have been, they were cut out.

Q Subsequently, do you recall what discussions ensued concerning fixing a subcontract price?

A Yes. Mr. Coleman and I quickly reviewed the prime contract to be sure we understood the deliveries by each month and also so that we could understand what else was in the contract, and then we started negotiating the price.

Q Do you recall what was said in the course of the price negotiations and by whom?

A I made an offer to them to subcontract it on the basis of $365 a unit.

Q What was their response?

A Mr. Leonard countered by wanting, as I remember, the best I remember, was around $350.

THE COURT: What was your offer?

THE WITNESS: $365.

THE COURT: He wanted $350? Why?

THE WITNESS: In other words, he wanted to --

THE COURT: He was to pay you that much?

THE WITNESS: Why else but that wasn't what anybody was getting from the Government.

THE COURT: That is what you were going to get?

THE WITNESS: No, sir.

Q In fact, at this time is it correct that you did not know what American Marc Division was getting from the Government per unit?

A That is right, we did not know.

Q Were any discussions had about structuring the subcontract as anything other than a subcontract?

A Yes, one of the first things that I asked Mr. Leonard to do after we reviewed the prime contract was to novate the contract.

THE COURT: Is that a contract where you take over directly from the Government?

THE WITNESS: Yes, sir, that is a regular procedure that you go through legally to transfer the responsibility from one contractee to another.

THE COURT: If that had been done the Government would have made you directly responsible? Your obligation would have been direct?

THE WITNESS: We would have been totally responsible for the contract and also we would receive payments directly.

THE COURT: And the Government would be out of the picture as though it had never been in?

THE WITNESS: That is right.

Q At what portion of the meeting that you had, when you returned to Mr. Leonard's office, was this consent of a novation brought up; by that I mean, the beginning, the end or the middle?

A It was brought up several times, but the first time was after we reviewed the prime contract and went back into negotiations.

Q When you say "reviewed the prime contract," you are referring to the blanked out price version that was given you by Mr. Walck?

A Right.

Q What was Mr. Leonard's response, if anything, to your suggestion of novating the prime contract?

A He stated that they did not want to novate the contract.

Q Did he state anything further to you in this connection?

A Yes.

Q What was that?

A The reason being that the parent company, Eon, had several Government contracts and they wanted to maintain a good working relationship with the Government for future business.

Q Did he explain to you how the working relation-

ship would be harmed if there were a novation; was this explained to you?

A He stated that American Marc wanted to maintain control of the contract so they could administer a contract direct back to the Government.

Q Was there any other reason expressed by Mr. Leonard concerning his lack of desire to novate the contract?

A He indicated that they were in a profit position on the contract and they wanted to continue being in a profit position.

Q What did you understand that statement to mean?

MR. FELDSHUH: I object to that.

THE COURT: I will take it.

MR. FELDSHUH: I think it stands on its own, sir.

THE COURT: Overruled.

What did you understand?

THE WITNESS: I understood this to mean because they had blanked the prices out, what they wanted to do was subcontract it for a lesser amount than they were getting from the United States Government.

[illegible]

Q Is it your understanding, Mr. Rouse, that had there been a novation that American Marc could not have

gotten any furtherprofit on its contract?

MR. FELDSHUH: I object to that. I think it is objectionable as to form.

THE COURT: It is obvious the answer is yes.

Q Is that the answer, Mr. Rouse?

A Yes.

Q I believe you testified that as to this subject, the question of novating as to the subcontract was broached on several occasions during its consideration. Could you state on approximately how many occasions that came up?

A I would say at least, probably, eight to ten times during the course of negotiations.

Q You are not just referring to that meeting in Mr. Leonard's office? Did you in the course of --

A The majority of time was yes, during that day.

Q Other than what you have testified Mr. Leonard's reaction was, did he say anything else when the subject was approached on subsequent occasions?

A No, he maintained about the same position every time I brought it up.

Q During the meeting in Mr. Leonard's office which you have been testifying to, was this particular discussion had concerning a subcontract price?

A Yes.

Q Was there a resolution of that? Was an understanding reached as to the subcontract price during that particular meeting?

A Yes, during that day. Yes, the meeting ran all day, to clarify the point.

Q Approximately what time did you break up that evening or that afternoon?

A It was real late in the day, probably 6.30.

Q During the course of the day, when did you arrive at a proposed subcontract price?

MR. FELDSHUH: I didn't hear that, your Honor.

THE COURT: What part of the day did he arrive at a subcontract price.

MR. FELDSHUH: That you, sir.

A It was some time during the afternoon.

Q What price was agreed upon?

A We finally agreed on a price of $360 per unit provided that $5 would be paid to Mr. Walper as his commission.

THE COURT: So you originally started at 365 and then came down 360 plus 5 for Mr. Walper?

A Mr. Walper's 5 was in the 360. We made an agreement on a 360 price provided that we would pay Mr. Walper $5 a unit.

THE COURT: So you effectively came down from 365 to 355?

THE WITNESS: That is right, but the contract stated 360.

Q Was any statement made by you or Mr. Walper during the course of this conversation which indicated what the fee to Mr. Walper would be?

A Actually this was handled by Mr. Leonard in the pricing.

Q Could you explain what you mean by that?

A Mr. Walper had previously told me on Friday night, when he called me on May 7, that his commission would have to be $5 a unit or he wouldn't bring the two parties together, so that during the course of negotiating the final price Mr. Leonard agreed on a 360 price provided that we would pay Mr. Walper his $5 per unit commission.

Q So the figure of $5 per unit commission was mentioned in front of Mr. Leonard; is that a fair statement?

A Yes.

Q Did Mr. Walper actively participate during the course of this meeting?

A He was more of an observer and mediator, I might add.

THE COURT: Quite a difference between those two.

THE WITNESS: There was a certain point, if I could explain -- there was a certain point during the negotiation that got a little heated, so he tended to try to calm everybody down.

THE COURT: What caused the heat?

THE WITNESS: When we got into a discussion on the purchase of the inventory and the tooling.

Q Was any discussion had during the course of this meeting, Mr. Rouse, as to how the American Marc Division intended to pay Teledyne this $360 per unit price?

A Not until late in the day.

Q To the best of your recollection, what conversation encompassed this topic late in the day?

MR. FELDSHUH: I would like a time fixed.

THE COURT: You can do that on cross-examination.

Q To the best of your recollection, Mr. Rouse, what time of day was this?

A I would say it was probably some time after 4 o'clock, I would say.

Q What was said by you and Mr. Leonard in this regard?

A I told Mr. Leonard -- because by this time I

had received a telephone call back from Mr. Lewis during the afternoon --

Q Approximately what time did you receive the telephone call?

A It was some time in the mid-afternoon.

Q And you say this was prior to your discussion of the topic with Mr. Leonard?

A Right.

Q What to the best of your recollection did Mr. Lewis say to you and you to him?

A Mr. Lewis told me that he had gotten a D & B and that Eon's credit was very questionable and they were financially in not too good shape. He told me that we should not give them an open line of credit, and he suggested that we get them to novate the contract or if we couldn't get them to novate the contract, to get some kind of a special bank account set up where the moneys would flow in to pay our invoices.

Q Where were you when this telephone call was had?

A I think I probably took it right outside the room at the secretary's desk.

Q Was anyone else in close proximity to you, within hearing distance, so to speak, during this telephone conversation?

A Mr. Coleman was there.

Q Was Mr. Coleman listening in on another extension or was he just standing there?

A No, he was just there.

Q Was there anything else that was said during the course of that telephone conversation?

A No, that was about it.

Q Approximately how long did it last, how many minutes?

A Just a matter of three minutes; probably three or four minutes, maybe five minutes.

Q Was any mention subsequently made to Mr. Leonard concerning the content of this telephone call?

A Immediately upon my returning to the room I told Mr. Leonard that I had received a report back from our vice-president of finance about the results of the D & B check, and I again asked him to novate the contract.

THE COURT: You told him what the results were?

THE WITNESS: Yes.

THE COURT: You told him substantially the same thing that you just told us?

THE WITNESS: Yes.

Q Did Mr. Leonard in your opinion evince any surprise when you relayed the credit information given you

by Mr. Lewis?

A None whatsoever.

MR. FELDSHUH: Objection.

THE COURT: Overruled.

Q To the best of your recollection, what was the substance of your conversation?

A I told Mr. Leonard that the D & B check showed that Eon was financially not in good shape and that I had been told by the vice-president of finance that we could not extend them an open line of credit and for that reason we wanted to novate the contract, and we would take over the prime responsibility.

Q What was Mr. Leonard's reaction?

A He refused to novate the contract.

Q What conversation ensued after that?

A I told him, I said, "In lieu of novating the contract, we have got to come up with some kind of a special relationship to be sure that our invoices are paid as we ship the units."

Q Do you recall your exact phraseology? You just said special arrangements. Was that the phrase that you used in the course of that conversation?

A As I remember, he asked me,"Well, what do you want?"

And I said, "Well, we would consider a special bank account to be set up to receive the funds directly from the United States Government which would be used then to pay our invoices."

Q What, if anything, did Mr. Leonard respond?

A Mr. Leonard readily agreed to it.

Q Do you recall what he said?

A He said that he would be agreeable of doing this.

Q At this point in your conversation or in your meeting, were any mechanics discussed as to the setting up of a special bank account?

A Just the, you know, just the general idea that it would have to be a reputable bank, a bank that was acceptable to Teledyne and that he would have to give us something in writing confirming that it had been done.

Q Did you describe to Mr. Leonard during the course of this meeting in any further detail what you had wanted to have in the way of a special bank account?

A Other than it was to be set up specially to be used to pay up our invoices only. We did tell them that if there was any residual money over and above what was required to pay our invoices, of course, that was required to be paid to them.

Q Was there any understanding reached at this

time as to later entering into a written agreement covering a special bank account?

A Later in the day I made notes, handwritten notes of what was agreed to.

Q Did you show these notes to Mr. Leonard?

A He saw them that day, plus we gave him a copy the following day.

Q Restricting my question, Mr. Rouse, to this day, that is the 10th, was any particular bank the subject of discussion as a possible repository of the special account?

A As I remember, he mentioned the Bank of America and I told him I thought that would be acceptable to our company.

I would like to correct one statement. I said we gave him a copy the following day. It would have been two days later, the 12th.

THE COURT: The same copy?

THE WITNESS: Right.

THE COURT: A Xerox copy?

THE WITNESS: Yes, they made a Xerox copy of it.

THE COURT: Do you have those notes? Are they going to be offered?

MR. MITCHELL: I propose to offer them, your Honor. I am trying to get them in from the date of

discussion onward and approach it chronologically.

THE COURT: How much longer is your direct going to be?

MR. MITCHELL: Another two hours.

THE COURT: At some point, if you can find a convenient place during the next 10 minutes, let's take a break for the stenographer.

MR. MITCHELL: Certainly.

Q Was any discussion had during this meeting, Mr. Rouse, involving the amount of money left to be paid American Marc under its contract with the U. S. Government?

A Yes. Earlier, prior to actually finalizing the negotiation of the price, I asked Mr. Leonard if there was money remaining in the prime contract for the second year procurement, and he said yes, there was plenty of money to pay for the subcontract.

Q At the time that Mr. Leonard made this statement, was this subsequent to your agreement on the $360 per unit subcontract?

A It was after the time that we had reviewed the prime contract and we saw in the prime contract where they were getting progress statements.

Q I am trying to fix the sequence.

Had the $360 per unit subcontract price been

arrived at by the time Mr. Leonard indicated to you that there would be enough money coming from the Government?

A It was prior to.

MR. MITCHELL: I think, your Honor, this would be a convenient time for a break.

THE COURT: We will take a five-minute break.

(Recess.)

Q Are you saying that the fixing of the $360 per unit cost was the prior event?

A Would you go back and ask --

THE COURT: He wants to know whether the cost of the $360 per unit had been arrived at before you told him about the D & B.

THE WITNESS: Oh, yes. I'm sorry. The D & B, right. The 360 had been fixed.

THE COURT: Before you got into talking about the D & B?

THE WITNESS: Right. I misunderstood the question.

Q So when Mr. Leonard stated that there would be enough money left in the contract you had already agreed on the 360 per unit cost; is that correct?

A Well, if I can answer like this:

Actually this question was asked him twice and

he answered two different times. Again, one time aftet we reviewed the prime contract and we asked for the novation and we talked about that, about the progress billings and things, he indicated then, when I asked him if there is enough money remaining in the contract, he said, "Yes, for the second year procurement."

And then following the telephone call I received from Mr. Lewis, and when I explained about the D & B, that we had to make some special arrangement, Mr. Leonard again stated, "I don't know what you are worrying about because there is plenty of money in the contract to pay for the second year procurement."

THE COURT: So the second time he said that the cost of the 360 had been established?

THE WITNESS: Yes, sir.

Q Did you have any discussions with Mr. Leonard concerning American Marc sources of funds outside the remaining balance to be paid on the Government contract as a possibility of paying Teledyne from?

MR. FELDSHUH: May the reporter read the question?

THE COURT: Was there any discussions as to the source from which the Plaintiff would get money outside the Gover ment? That is the question.

MR. FELDSHUH: Thank you, sir.

A Yes, and he stated that they were going to liquidate American Marc and that there would be funds in the contract to pay for it.

THE COURT: Funds in the contract, not outside the contract?

THE WITNESS: Not outside the contract, right.

Q Did there come a time, Mr. Rouse, when a discussion was had concerning an inventory of parts on hand at American Marc?

A Yes.

Q And when in the course of this meeting did such a conversation ensue?

A Following when we had settled on the price.

Q Do you recall how this topic was first approached?

A Yes. Mr. Leonard said that they would have excess inventory over and above what they needed to finish the first year and they wanted to sell to us.

Q He said they did have and would have?

A He said they did have and they would have some additional inventory.

Q Incidentally, were the generator sets to be manufactured under the second procurement year the same sets as were manufactured under the first procurement year, or were they different in any respect?

A They were the same.

THE COURT: What were these generators used for?

THE WITNESS: They are used by the Army to generate electricity out in remote places.

THE WITNESS: They are used by the Army to generate electricity out in remote places like in bivouac areas.

Q Was there any description given to you by Mr. Leonard of the inventory which was on hand at the time?

A As we had taken the plant tour, in the tour early in the morning he had shown us some of the items that they would have excess over and above what they needed.

Q Did he indicate to you at the time a specific quantity of inventory parts that would be available?

A No. He said a rough idea of not to exceed -- probably not to exceed $250,000, the best I can remember, but he did set some ball park figure.

Q Was the nature of this discussion you had concerning the inventory a discussion as to the possibility of Teledyne purchasing the inventory; was that the nature of the discussion?

A That is right.

Q What if any agreement was had with Mr. Leonard

on this topic?

A We had a very lengthy discussion. In fact, it wasn't finalized that day of the 10th. It was left hanging open. Mr. Leonard's position was that he wanted a hundred per cent of the value that they had in the inventory.

Q What did you understand Mr. Leonard to mean by a hundred per cent of the value that they had in the inventory?

A What they had paid for it from a supplier by each individual item. I offered him 75 cents on the dollar, and this would have been based on actual invoices that they had paid from the supplier.

Q When you say you offered him 75 cents on the dollar, was this your initial offer?

A It was my initial and also final offer.

Q What was Mr. Leonard's reaction or counter-proposal?

A That was one of the times that the discussions got very heated.

Q At some point he, I take it, issued a counter-proposal, a counter-offer; is that correct?

A That is correct.

Q What was that counter-offer or counterproposal?

A He offered to sell it for 90 and finally 85 and at the end of that day we had not agreed.

Q By "finally", you mean at the end of the day?

A The end of the day he had offered 85.

THE COURT: At the end of the day there was a difference of 75 and 85?

THE WITNESS: Yes, sir.

Q How was the subject left at the end of the day? Were there to be further discussions? How was it left?

A Actually that subject was, you might say, dropped at this point or laid aside, and then we started talking about the sale of the tooling.

Q What was the tooling as contrasted with the inventory?

A The tooling was the items such as some of the test equipment, some of the fixtures, some of the tooling that was at the vendors. This was hard tooling, we call it.

Q How did you first know or how did you first become aware of the fact that you would need tooling?

A They gave us a listing of the tooling showing the value that they had on the tooling.

Q Was this tooling utilizable in the manufacture of the 1.5 kilowatt generator sets?

A Yes.

Q Was a discussion had as to the possibility of Teledyne Continental Motors acquiring the tooling?

A Yes.

Q Was that discussion resolved or did that result in agreement on the 10th?

A Yes, it was fairly well resolved on the 10th.

Q What was the understanding, as best you recall, by the close of the meeting on the 10th with regard to the tooling?

A The way it was left -- in the beginning Mr. Leonard wanted $30,000 for the tooling. I offered 20. And after a long, long discussion I finally increased the offer to $25,000 provided that they would accept the 75 cent on the dollar for the inventory, so the two were tied together at the end of the day.

Q Was the price for the inventory thereafter in further discussions agreed upon?

A No. Mr. Leonard said he could not agree on the sale of the tooling or inventory at that time until he checked with his people in New York.

Q And at that time did Mr. Leonard leave the room or indicate to you he was going to contact his people in New York?

A During the negotiating session he had left the room several times at different points. What he did, I don't know. But he did say that he would contact his people in New York.

Q Did he mention any specific names of his people in New York?

A He did mention -- no, he didn't, not that day he didn't.

Q After May 10th, after the meeting of May 10th, was an agreement as to the purchase price of the inventory agreed upon?

A The following day, to nswer your question, we met in the International Hotel in my room and at that time Mr. Leonard said he had checked with his people and they would agree on the inventory price of 75 cents on the dollar and also the sale of the tooling for $25,000.

THE COURT: Did you say this was the following day?

THE WITNESS: Yes.

THE COURT: Before he got the handwritten notes?

THE WITNESS: Yes.

Q Mr. Rouse, did you take any handwritten notes of your discussions with Mr. Leonard on May 10, 1971?

A Yes, I did.

Q Was it your regular course of business to take notes of discussions of this sort?

A Yes.

Q And did you take these notes on that occasion in the course of your business?

A Yes.

MR. MITCHELL: I would like to have marked at this time for identification a booklet entitled "A Day Timer", and I would like it marked Plaintiff's Exhibit 1 for identification.

(Plaintiff's Exhibit 1 was marked for identification.)

xx MR. MITCHELL: I will be referring to specific pages.

May I offer your Honor a copy?

MR. FELDSHUH: It hasn't been marked in evidence yet.

MR. MITCHELL: That is correct. I intend to offer it in evidence.

MR. FELDSHUH: I will object to it.

THE COURT: You object to him giving the Court a copy.

MR. MITCHELL: These have been marked on prior depositions.

You have, Mr. Feldshuh, the Day Timer.

MR. FELDSHUH: I have a copy of those things that were marked for identification.

MR. MITCHELL: That is correct. They were marked for identification in a previous deposition.

I would like to show it, your Honor, to the witness.

MR. FELDSHUH: I don't know what you handed up to the Court.

MR. MITCHELL: A copy of pages E-1 through E-6, which were photostated in your office from the original exhibit which I am not showing to the witness.

MR. FELDSHUH: I have an objection. I understood that you were marking that for identification.

MR. MITCHELL: That is correct, and I am going to offer it in evidence as soon as the witness identiries it.

MR. FELDSHUH: I see.

Q Mr. Rouse, I show you Plaintiff's Exhibit 1 for identification and ask you if you are familiar with this document?

A Yes.

Q I refer you to specific pages which are indicated by dates and the book appears to be a calendar variety and

show you the date Saturday, May 8 or the page represented by that date through Thursday, May 13, the page represented by that date.

MR. MITCHELL: I will represent to the Court that these pages were previously marked at Mr. Rouse's deposition as Defendants' Exhibits E-1 through E-6 respectively. The document as a whole was Exhibit E, but the separate pages were E-1 through E-6.

MR. FELDSHUH: I object to it, your Honor, on the ground --

THE COURT: He hasn't offered it yet.

MR. FELDSHUH: I'm sorry. I thought he did. His voice started to drop. I thought he made the offer.

Q I direct your attention, Mr. Rouse, to the page indicated by the date as Saturday, May 8 through the page indicated by the date May 13, and ask you if you can recognize these pages?

A Yes.

Q Would you state what they constitute?

MR. FELDSHUH: Objection. The best evidence is the document itself.

THE COURT: How can he offer it in evidence unless he describes it. He is trying to lay a foundation.

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THE COURT: How can he offer it in evidence unless he describes it. He is trying to lay a foundation.

A This is the pocket Day Timer that I carry with me. Each month it is a new one, and I make notes in it in discussions and everything for a basis of actually going back and developing, you know, more detailed minutes or sometimes I will leave them in this form

Q I direct your attention to the handwritten portions on the pages that I have just shown you and ask you if this is not your handwriting?

A It is my handwriting, right.

Q Does the handwriting indicated on this document constitute the notes you indicated you took during the course of this discussion?

A That is right.

MR. MITCHELL: I now offer this.

THE COURT: These notes were made contemporaneously with the discussions going on?

THE WITNESS: Yes, sir.

THE COURT: Is there anything in these notes that you put on afterwards?

THE WITNESS: No, sir.

MR. FELDSHUH: I object to this on the ground that this witness' memory didn't require any refreshing and that these notes are, if nothing else, self-serving, and absent the need to have any kind of recollection refreshed, they are not competent.

THE COURT: I will take judicial notice of the fact that the witness requires the refreshment of recollection as to a conversation that took place May 13, 1971, whether he says so or whether he doesn't. Overruled.

(Plaintiff's Exhibit 1 received in evidence.)

Q I direct your attention, Mr. Rouse, to the page which has previously been marked as E-3 for identification which is the page indicated on top as "Monday, May 10th," and I refer to Item C, which states:

"Inventories owned by American Marc."

Does this refresh your recollection as to a discussion you had with Mr. Leonard concerning the inventory to be sold to Teledyne?

MR. FELDSHUH: Objection, your Honor. There is no indication that he needs refreshment.

THE COURT: I have taken judicial notice of the fact that he needs refreshment as to the details of the conversation that took place May 10, 1971.

MR. FELDSHUH: I didn't hear your Honor's ruling before clearly. I respectfully accept, your Honor.

A Yes, it does.

Q What was the sum and substance of the discussion which this particular entry reflects?

A As I stated earlier, when we reviewed the prime contract we noticed that there was a clause for progress billing, so when we started discussing about the sale of the inventory I asked Mr. Leonard if American Marc owned the inventory free and clear and he stated that the inventory

was owned by American Marc, Eon, and could be sold to us.

Q What is the connection, Mr. Rouse, between the concept of progress payments and the ownership of the inventory, if any?

A The normal relationship would be or could be that in the performance of a contract you could draw 85%, if you are a small business, of the cost of your materials in advance of shipments of the final unit. It is up to the company whether they want to do this or not.

Q How does this affect, if it does at all, whether or not American Marc owned the inventory which it wished to sell you?

A We were talking about the inventory over and above the first year procurement, which would be surplus, and if they had only received funds on the first year, this would mean that the second year would not have been progress billed.

THE COURT: If it had been progress billed would title of the inventory go to the Government?

THE WITNESS: The Government would own the inventory, yes, sir.

Q I direct you, Mr. Rouse, to the page indicated by the date May 11, and I will read as follows:

"Major points: (1) (Eon) Leonard refuses to novate

the contract to TCM; wants the subcontract.

"(2). There is enough money in contract for the 4,350 units to satisfy TCM invoices per Leonard.

"(3). Inventory balance to American Marc to be sold to TCM."

I ask you if this reflects the discussion that you had with Mr. Leonard on May 10th, 1971.

MR. FELDSHUH: Same objection, your HOnor.

THE COURT: Same ruling.

A It does.

THE COURT: You made these notes in the room with Mr. Leonard, not after you got out?

THE WITNESS: No, sir, these notes were made as the negotiations progressed.

THE COURT: You didn't change them in any way after; you didn't review them afterwards and change them?

THE WITNESS: No, sir.

THE COURT: All right.

Q Approximately what time, Mr. Rouse, was the meeting adjourned on the 10th?

A Like I said, late in the evening, probably sometime around 6:30 or so.

Q Subject to the termination of the meeting for that day, what did you do, where did you go physically?

A You mean in the evening?

Q In the evening.

A Mr. Coleman and I went out to dinner by ourselves.

Q Did there come a time when you had occasion to set down in writing any of the agreements that you felt had been reached that day, other than the exhibit, Plaintiff's Exhibit 1 in evidence?

A What I did that night, I called Mr. Kotts, our in-house counsel and I discussed with him the results of the negotiations and I told him that we needed to come up with an agreement that I could present to Mr. Leonard the following day encompassing the points that we had discussed.

Q Was anything written during the course of your conversation with Mr. Kotts or thereafter?

A I was reading from my notes here and I'm sure Mr. Kotts was probably making notes.

Q What happened with regard to the negotiations the next day on May 11th?

A Well, the following morning I called Mr. Kotts back sometime after eight o'clock California time and talked to him about this agreement and I took it down in longhand, the entire agreement that we signed, and once that was done, Mr. Walper came to the hotel and he indicated

that Mr. Leonard would be coming later, so Mr. Walper and Mr. Coleman took the hand-drafted agreement to a public stenographer and had it typed.

Q When you refer to the agreement, you are referring to something which had not been shown to Mr. Leonard; is that right?

A That is correct.

THE COURT: The proposed agreement?

THE WITNESS: The proposed agreement, yes, sir.

Q Did there come a time when you obtained a typewritten copy of that agreement from the stenographer?

A Yes, when Mr. Walper and Mr. Coleman came back Mr. Leonard had come to my room and we reviewed the proposed agreement and the typist had done such a bad job that we had to go through to make corrections, and also Mr. Leonard and I agreed on the language and everything and then it was sent out, following lunch it was sent out again for retyping to another public stenographer.

Q Are you saying that there was a meeting with Mr. Leonard at which you discussed the first poorly typewritten draft?

A That is right. That is the time when Mr. Leonard told me that he had received an approval to sell the inventory and also the tooling at what I had proposed the previous day.

Q Did there come a time when a second typewritten draft agreement was prepared?

A Yes. It was after lunch.

Q How did that come to be prepared?

A Mr. Walper and Mr. Coleman came back with it and Mr. Leonard came back to the hotel and we reviewed the final draft and at that time we had an agreement and he wanted to take it to his lawyers in Downtown Los Angeles for their review and for final typing.

Q Incidentally, Mr. Rouse, have you checked your own personal files and your company files to see if there are any copies of either of these two typewritten draft agreements?

A We have searched our files and to the best of my memory, the first one was destroyed after it was typed the second time and the one that was typed a second time was sent to Eon's lawyer.

Q Do you recall the name of Eon's lawyer? Was this in Los Angeles?

A Yes, it was in Los Angeles.

Q Do you recall the name of the attorneys?

A I do not.

THE COURT: It is your recollection that they got the second draft and never returned it to you?

THE WITNESS: Yes, sir.

THE COURT: Is there any difference in what they typed as far as you can recollect?

THE WITNESS: No, sir.

Q What further ensued, if anything, on the date of the 11th with regard to negotiations?

A Also during the day of the 11th we had taken some exceptions to the terms and conditions of the American Marc purchase order. We gave the exceptions to Mr. Leonard at the same time and he indicated that he would have the purchase order retyped and have it ready for our review the following day, which would have been the 12th.

Q As of the close of your meeting on the 11th, was it contemplated that any final contracts or final written agreements would be executed?

A Yes. When Mr. Leonard came back to the hotel on the afternoon of the 11th he indicated that we would be able to execute the contract the following day and he stated that he had requested or his people had requested that Mr. Anton, the president of Eon, come to California for the signing of the contract; that they want him to sign personally.

Q What agreement or agreements was it contemplated

by the end of Tuesday, May 11th would be entered into; how many agreements?

A The purchase order and then the agreement on the sale of the inventory, the tooling and the unit price.

Q Was there any agreement that was to be entered into concerning the special bank account?

A At that time I had a handwritten sheet of what was agreed to about the bank account and also about how the inventory would be handled. These were just on the handwritten sheets and they were not incorporated into the contract though.

Q Did there come about a meeting on May 12th?

A Yes.

Q Who was present at that time?

A At about twelve o'clock on May 12th Mr. Leonard and Mr. Anton came to the International Hotel in Mr. Leonard's car, and also Mr. Coleman and I met them at the door and we got in the car and we went back to American Marc.

Q What happened at American Marc?

A At American Marc we reviewed the purchase order because he had retyped it with the changes that we wanted, the terms and conditions, and also we reviewed in general terms of the agreement that we were going to sign at the

lawyer's office. We did not have a copy of it, but we went through it from the handwritten notes that I had, which also showed about the special bank account, how it would be set up.

MR. FELDSHUH: I move to strike out anything that the handwritten notes showed with reference to a document not in evidence.

MR. MITCHELL: I intend to submit that very shortly in my presentation.

THE COURT: Overruled.

Q Was it your understanding, Mr. Rouse, that Mr. Anton had come out from New York or was already there in Los Angeles on May 12th?

A Mr. Leonard told me on Tuesday that his people had specifically requested Mr. Anton to come out for the signing of the contract.

THE COURT: Who were his people? Can you identify his people?

THE WITNESS: His New York people, is the way he said it.

Q Who was present at the American Marc offices when Mr. Anton was there?

A Mr. Anton, Mr. Leonard, Mr. Coleman and myself.

Q Was Mr. Walper there?

A He wasn't in the building because he took Mr. Coleman to the airport following our meeting. As best as I can remember, he was not in the meeting.

Q Did Mr. Anton introduce himself to you upon your first meeting?

A Yes. Mr. Leonard introduced him.

Q What discussions ensued at this time?

A You mean at the meeting at American Marc?

Q That is correct.

A Again, as I stated earlier, we reviewed the purchase order and we talked about the general contents of the agreement that we had come up with, and, as I said, we reviewed the handwritten notes and the fact is that Mr. Leonard asked for a copy of them and a couple was run and left there, and that was about it.

THE COURT: That is not these handwritten notes?

THE WITNESS: No.

THE COURT: Not Exhibit 1?

THE WITNESS: No.

MR. MITCHELL: I am now asking to have marked as Plaintiff's Exhibit 2 for identification a photostatic copy of a two-page handwritten note indicating at the top, "Meeting, May 12th, 1971."

(Plaintiff's Exhibit 2 marked for identification.)

MR. MITCHELL: This document has previously been identified on the deposition of Mr. Anton as Plaintiff's Exhibit 4 for identification.

MR. FELDSHUH: May I see it?

MR. MITCHELL: Yes. I will further represent that this document was obtained from Eon Corporation's offices in Brooklyn, New York pursuant to a request for production of documents.

THE COURT: This meeting was May 12th. When did you arrive in Los Angeles?

THE WITNESS: On Sunday, the 9th.

THE COURT: Then you had a meeting on Monday, the 10th?

THE WITNESS: 10th, 11th and then the 12th.

THE COURT: My impression was that these notes had been made on May 10th.

THE WITNESS: No. All the notes that I made during the course of negotiations was this. (Indicating.) I had prepared this so that when we went to the office of American Marc on the 12th we had this to discuss.

THE COURT: This you prepared from your other notes, Plaintiff's Exhibit 1?

THE WITNESS: Yes, general notes.

THE COURT: It says, "Meeting of May 12th."

These, it is my understanding, had been arrived at prior?

THE WITNESS: Through the progress of negotiations.

THE COURT: And handed to Mr. Leonard on May 12, right, and Mr. Anton?

THE WITNESS: Yes.

MR. FELDSHUH: I will object to the introduction of this.

THE COURT: On what ground?

MR. FELDSHUH: On the ground that it represents a self-serving document and upon the further ground that this witness' recollection does not require to be refreshed.

This is merely confirmatory of what he has already testified to, your Honor.

THE COURT: I assume the purpose of the offer is to show that your clients knew about it.

MR. MITCHELL: That is it exactly.

MR. FELDSHUH: This witness has testified to his conversation.

THE COURT: He also testified that he gave your client this particular document.

MR. FELDSHUH: I understand that.

THE COURT: Isn't that relevant?

MR. FELDSHUH: Of course, every item here is relevant.

THE COURT: Isn't that relevant, that your client was handed this particular document?

MR. FELDSHUH: It is a question of competence.

THE COURT: Wouldn't that make it competent?

MR. FELDSHUH: I am not addressing myself to the relevance. The items are relevant.

THE COURT: How is it incompetent to put in evidence a document which your client had in his hand?

MR. FELDSHUH: It is offered not for the truth of the matter but merely to show that my client received a document. I can send any notice to anybody.

THE COURT: I don't want to hear any more. Overruled.

MR. FELDSHUH: I respectfully accept.

Q Can you identify this document, Mr. Rouse?

MR. FELDSHUH: May I have a copy of that document?

MR. MITCHELL: It is Anton Deposition Exhibit --

MR. FELDSHUH: We didn't get one page.

MR. MITCHELL: You produced these.

THE COURT: You produced these, so what you got you gave them.

MR. FELDSHUH: Just to enlighten the Court in

connection with the document itself and your Honor's comment that we produced it --

THE COURT: It wasn't my comment. I heard that representation made. You dispute the representation?

MR. FELDSHUH: Yes, I do, to this extent: What we did was we gave Mr. Mitchell carte blanche to go into the files of Eon and to cull out whatever documents he thought were relevant and pertinent. After he culled them out himself, then he furnished us with a Xerox of what he culled out, so it isn't as if I had seen this document.

THE COURT: Your client had it in his file.

MR. FELDSHUH: Yes.

THE COURT: Are you suggesting that Mr. Mitchell put it in his files?

MR. FELDSHUH: No, I'm not suggesting that at all. I'm just pointing that out, that I was not aware of the second sheet.

MR. MITCHELL: I did visit the offices of Eon. I went through some records that were shown to me. I asked Mr. Anton, president of Eon, to reproduce a copy for me. He stated to me that he was making a copy for his attorneys also, Mr. Feldshuh, so I'm sure we have a copy and I'm sure Mr. Feldshuh's office has a copy of

everything that was delivered to us.

THE COURT: Where did you get the original of this paper I'm holding?

MR. MITCHELL: From the files of Eon Corporation which they represented as their files and records.

THE COURT: Did you photostat it or did they photostat it?

MR. MITCHELL: They photostated.

MR. FELDSHUH: Is the original in the courtroom?

MR. MITCHELL: I gave Mr. Feldshuh a photostat which was photostated at Eon Corporation. I, of course, left the original at Eon Corporation. The exhibit that the witness has is the original one given to us.

MR. FELDSHUH: I see.

THE COURT: What physically did you do with the original of this document on May 12, 1971?

THE WITNESS: I can't remember exactly because we didn't have this in our files.

THE COURT: I am going back to May 12, 1971.

THE WITNESS: Okay.

THE COURT: You are at a meeting and --

THE WITNESS: What did I do with it?

THE COURT: Yes.

THE WITNESS: On May 12 when we were meeting

with Mr. Anton and Mr. Leonard, the best that I can remember is that we reviewed the sheet of paper and the items on here and they wanted a copy of it. A copy was made. I can't remember whether we left the original there for them and I took a copy or whether we kept the original and gave them a copy. Mr. Leonard asked for a copy and a copy was made and left.

THE COURT: Did you discuss this document with Mr. Leonard?

THE WITNESS: Yes.

THE COURT: With Mr. Leonard only or with Mr. Leonard and Mr. Anton?

THE WITNESS: Mr. Leonard and Mr. Anton.

THE COURT: What did you find in the files, a Xerox copy or the original?

MR. MITCHELL: I honestly do not recall.

THE COURT: It doesn't really make much difference.

Q Mr. Rouse, this is a handwritten copy and I cannot read some of the handwriting on this. I would request you read this so it is clear on the record. I am referring to the contents of Plaintiff's Exhibit 2 in evidence.

A Starting from the top?

Q Yes.

MR. MITCHELL: I believe there appears an identification number, a deposition identification number on the top right-hand, which of course was subsequent and put on the paper by a stenographer. The offer is not made with respect to such marking.

A Reading: "May 12, 1971. The following items were agreed to: (1). Eon will set up with the Bank America to hold funds received from generator sales to the Government for a special account and will pay invoices to TCM before anyone else. They will confirm this in writing.

"(2). Eon will contact St. Louis yet this week (May 14) that the contract is being subcontracted to TCM. They will notify us if anyone from TCM is required at meeting.

"(3). Eon will put out a stop work order on all open purchase orders at vendors for the quantity TCM will require. TCM will determine if they want to continue using Eon vendors by May 18, 1971 and will so notify Eon. TCM will issue new P.O. taking over Eon terms, price and conditions.

"(4). Eon and TCM agrees that if a vendor comes in for a termination claim that TCM will agree to work with Eon to reduce their liability. Eon and TCM will

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review the price and if TCM can purchase cheaper from another vendor Eon will sell to TCM at TCM lower price.

"(5). Eon will split off the material required " -- there is something on the side I don't recognize as my writing -- "to complete their portion of the contract and balance of material will be inspected, counted and prepared for shipment to TCM. TCM to have man on site to inspect and coordinate the preparement of shipment."

Q Did Mr. Leonard request a copy of this document?

A He did.

Q Did you leave one with him?

A Yes.

THE COURT: Why didn't you have a special account? Why didn't you make arrangements to have the required signature on that?

THE WITNESS: I guess, your Honor, we are used to doing business with people in many companies and we thought of setting up the special account for the money to come into with the stipulation that only our invoices would be paid; that we were protected.

THE COURT: You didn't discuss with them the possibility of having a required signature?

THE WITNESS: No.

Q Mr. Rouse, you ultimately did request the signature of Mr. Leonard on a document which purported to cover the special bank accounts; is that correct?

MR. FELDMAN: I object to that, your Honor. This is leading this witness right into something, I feel. I will object as to form, your Honor.

THE COURT: Overruled.

A As the minutes -- let me correct that. Following my return to Muskegon on the 13th -- I arrived there on the night of the 12th and the 13th I wrote a confirming letter to Mr. Leonard covering all the items that we had agreed to that were not included in either the purchase order or the agreement that we had signed the previous day, and this letter also had a place for him to approve and return back to me, which he did.

Q Returning back to the date of May 12th, was a purchase order for the generator sets running from American Marc Division to Teledyne Continental Motors signed?

A It was signed by Mr. Leonard and I signed the acknowledgment copy and left it there. He gave us the original purchase order, which I gave to Mr. Coleman, and he also gave me a Xerox copy signed by Mr. Leonard.

MR. MITCHELL: I have a document which I request

to be marked Plaintiff's Exhibit 3 for identification on the purchase order letterhead of American Marc Division indicating Page 1 of 7 on the cover sheet and encompassing 7 pages and request that that be marked Plaintiff's Exhibit 3 for identification.

(Plaintiff's Exhibit 3 marked for identification.)

Q I show you this and ask you to identify this document.

A Yes. This is the original purchase order.

Q Was this the original purchase order that was signed on May 12, 1971?

A That is right.

Q Was it signed in your presence?

A Yes, it was.

Q Whose signature does it bear on the lower right-hand side?

A M. Leonard.

Q Did you see Mr. Leonard affix his signature at the place indicated?

A Yes, I did.

MR. MITCHELL: At the present time I would offer this in evidence. It is the purchase order.

MR. FELDSHUH: May I see it?

No objection.

THE COURT: Received.

(Plaintiff's Exhibit 3 received in evidence.)

Q I show you, Mr. Rouse, a series of papers clipped together on the purchase order letterhead of American Marc running from a number in the upper right-hand side, M - 1257-1 to M - 1257-17 and ask you if you can identify these documents.

MR. MITCHELL: I will ask that these documents be marked as Plaintiff's Exhibit 4 for identification.

(Plaintiff's Exhibit 4 marked for identification.)

A These are modifications to the original purchase order.

MR. MITCHELL: I offer them in evidence.

MR. FELDSHUH: Are you offering them all as one exhibit?

MR. MITCHELL: Yes, I am. These are modifications 1 through 17 to the purchase order.

MR. FELDSHUH: No objection, sir.

(Plaintiff's Exhibit 4 received in evidence.)

THE COURT: What are these again? I was reading something.

MR. MITCHELL: Those are the subsequent modifications to the original purchase order which has been

characterized as the subcontract agreement.

THE COURT: Was this the subcontract agreement that was dictated over the telephone?

MR. MITCHELL: That was on another agreement, the final of which I am going to introduce right now.

THE COURT: I have just been reading from the covenant which begins, "Contingent fees." Certainly as between the parties to this action that was wavied. Whether the law says it can't be waived is another question.

MR. FELDSHUH: I am sure that we would establish that to your Honor's satisfaction.

THE COURT: Assuming the testimony to be truthful. So far maybe, it is all a tissue of lies.

Q I have a three-page document entitled at the top, "Agreement," indicating the date of May 12th, 1971.

MR. MITCHELL: I ask that this document be marked Plaintiff's Exhibit 5 for identification.

(Plaintiff's Exhibit 5 marked for identification.)

Q Mr. Rouse, I show you this document and ask if you can identify it.

A Yes, this is the original agreement we signed on May 12th.

Q Is it the agreement which involves the inventory?

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A Yes.

Q Can you identify the signatures which appear on the third page at the foot?

A For Eon Corporation it is M. Leonard, vice president, and Nicholas Anton, president. For Teledyne Industries, Teledyne Continental Motors Company, H. W. Rouse, vice president.

MR. MITCHELL: I ask that it be received in evidence.

MR. FELDSHUH: No objection, sir.

THE COURT: Received.

(Plaintiff's Exhibit 5 received in evidence.)

Q Referring, Mr. Rouse, to Plaintiff's Exhibit 3, which is the purchase order, at what time was this signed by Mr. Leonard?

A It was signed during the meeting at American Marc on the 12th. I would say approximately around one o'clock.

Q Was this when Mr. Coleman was present also?

A That is right.

THE COURT: Was Mr. Anton present?

THE WITNESS: Yes, sir.

Q With respect, Mr. Rouse, to Plaintiff's Exhibit 5 in evidence, which is designated the agreement related

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to the inventory, when was this signed?

A To the best of my memory, I think it was sometime probably after three o'clock.

Q Was Mr. Coleman present when this was signed?

A He was not.

Q Who were the parties present when this was signed?

A It was Mr. Anton, Mr. Leonard and myself, plus their lawyer.

Q How did it happen that Mr. Coleman was not present during the signature?

A Mr. Coleman had a mid-afternoon flight back to South Carolina, so when we finished our meeting at the American Marc, Mr. Walper came to the airport for his flight .

THE COURT: That was while was being typed, Plaintiff's Exhibit 5?

THE WITNESS: While it was at the lawyer's office.

THE COURT: Being typed?

THE WITNESS: Probably.

Q Why was it, Mr. Rouse, that a signed agreement covering a special bank account arrangement with the Bank of America was not entered into on May 12, 1971?

MR. FELDSHUH: Objection. The document speaks for itself. There is no provision The reason why in the face of parole evidence makes no difference.

THE COURT: Overruled. There is no document here. It can't speak for itself.

A Because we had a gentleman's agreement at the meeting at American Marc the 12th that I would confirm it in writing back to them, those agreements, which would be a side letter agreement, and Mr. Leonard would sign it, which he did.

THE COURT: How did you arrive at this gentleman's agreement? Who said what to create this gentleman's agreement?

THE WITNESS: When we reviewed this handwritten document right there --

THE COURT: What was said on the subject?

THE WITNESS: Well, we reviewed it and both sides agreed and I said I would confirm it in writing the following day and they said fine.

THE COURT: Who was there when that was said?

THE WITNESS: Anton, Leonard, Coleman and myself.

THE COURT: And not the fellow that got the commission?

THE WITNESS: No, he was not in the meeting. To the best of my recollection he was not there.

Q You said handwritten document. Were you referring to Plaintiff's Exhibit 2?

A I don't -- I can't remember the numbers on them.

THE COURT: You were referring to this document, Mr. Mitchell?

MR. MITCHELL: Yes.

Q I show you Plaintiff's Exhibit 2 in evidence.

A Yes, that is the one.

Q You referred to a letter you sent dated May 13, 1971.

MR. MITCHELL: I ask that this document be marked as Plaintiff's Exhibit 6 for identification. It is a two-page document on the letterhead of Teledyne Continental Motors dated May 13, 1971.

(Plaintiff's Exhibit 6 marked for identification.)

MR. MITCHELL: For the record, a copy of this had previously been identified as Defendant's Exhibit C for identification on Mr. Rouse' earlier deposition.

Q Mr. Rouse, I show you this document and ask if you can identify it.

A Yes.

Q There appears to be some handwriting in the upper left-hand side. Was this affixed subsequent to the initiation of this lawsuit?

A This was -- when I received the letter back acknowledged and accepted by Mr. Leonard, I sent copies to the people noted in the left-hand corner.

Q I refer on Page 2 to a signature which purports to be yours. Is this in fact yours?

A It is my signature.

Q And to the left of that under the typewritten statement, "Acknowledged and accepted" appears to be Mr. Leonard's signature. Do you know if that is his?

A Yes, to the best of my knowledge, it is.

MR. MITCHELL: I offer this in evidence as Plaintiff's Exhibit 6, with the exclusion of the upper left-hand side notation, which appears to be some extraneous notations subsequently added to the document.

MR. FELDSHUH: May I have a short voir dire? This is not the original letter, is it? This is the photocopy.

MR. MITCHELL: This is the original signature of Mr. Leonard.

MR. FELDSHUH: No objection.

MR. MITCHELL: It is the photocopy that was sent

back.

THE COURT: Received.

(Plaintiff's Exhibit 6 received in evidence.)

MR. MITCHELL: I will read for the record the first two paragraphs of this letter dated May 13, 1971.

THE COURT: You don't need to read these for the record. They are perfectly plain. The others there was some sense to reading for the record because you couldn't read them.

Q I will direct the witness' attention to the first two paragraphs and ask him if the reference to the Bank of America is a reference to the special account which was to be set up pursuant to the agreement of May 12th.

A That is right.

MR. MITCHELL: I would like to have marked as Plaintiff's Exhibit 7 for identification a three-page letter under letterhead of American Marc Division of Eon Corporation addressed to Homer F. Coleman, indicating a carbon copy to H. W. Rouse.

(Plaintiff's Exhibit 7 marked for identification.)

MR. MITCHELL: The date is May 25, 1971. This is the original of a copy which was previously marked as

Defendant's Exhibit H for identification at an earlier deposition in this case.

Q Mr. Rouse, can you identify that document?

A Yes.

Q Was a copy of this document sent to you?

A Yes, it was.

MR. MITCHELL: I offer it in evidence.

MR. FELDSHUH: No objection.

(Plaintiff's Exhibit 7 received in evidence.)

MR. MITCHELL: I have a two-page document, a photostat of a letter which appears to be on American Marc stationery dated May 25, 1971 with an original received stamp at the bottom of the first page. I ask that this be marked as Plaintiff's Exhibit 8 for identification.'

(Plaintiff's Exhibit 8 marked for identification.)

THE COURT: Who is "Wally"?

THE WITNESS: He was the man who worked for Mr. Leonard.

THE COURT: He hasn't been mentioned to date.

THE WITNESS: No.

Q Would you state his full name for the record?

A His last name escapes me now.

Q Would it refresh your recollection if I mentioned

the name of Hammond?

A Wally Hammond.

Q Please identify that letter, Plaintiff's Exhibit 8.

A Yes.

Q Did you receive that letter on or about May 25, 1971, the date indicated?

A This was received in Walterboro, this copy and also I received a copy of it.

Q Do you recognize the signature on the second page?

A Yes.

Q Is that Mr. Leonard's signature?

A Yes, to the best of my knowledge.

MR. MITCHELL: I offer it in evidence.

MR. FELDSHUH: No objection.

(Plaintiff's Exhibit 8 received in evidence.)

THE COURT: This letter was a footnote to Judge Bauman's opinion; is that correct ?

MR. MITCHELL: I believe it was, your Honor. I think I quoted from that letter.

I now produce a three-page document on the letterhead of American Marc Division of Eon Corporation dated October 11, 1971 appearing to be over the signature of M. J. Leonard. I ask that this be marked Plaintiff's Exhibit 9 for Identification.

(Plaintiff's Exhibit 9 marked for identification.)

MR. MITCHELL: This document indicates a cc to Mr. Harold Rouse.

Q I show you this letter, Mr. Rouse, and ask you if you can identify it.

A Yes.

Q Can you recognize the signature on the third page?

A Yes.

MR. MITCHELL: I move this in evidence.

MR. FELDSHUH: No objection.

(Plaintiff's Exhibit 9 received in evidence.)

MR. MITCHELL: Your Honor, at what time would you propose we have a luncheon break?

THE COURT: How long have you got?

MR. MITCHELL: I'm afraid we are going to have to resume with Mr. Rouse later on. I don't think I can complete it. It would take maybe an hour, an hour and a half, approximately.

THE COURT: Shall we break now until a quarter of two?

MR. MITCHELL: Any place would be as convenient as any other. We can continue after lunch. It all

depends on what would be most convenient for everybody else. What do you prefer, Mr. Feldshuh?

THE COURT: We will have an hour and a quarter after lunch because I have another case at three p.m. In view of the fact that we are going to have an hour or an hour and a half normal Court time that you are not going to be working in court, I suggest you use the time to premark the exhibits so that we don't have to waste time marking exhibits.

(Trial recessed until 1:45 p.m.)

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AFTERNOON SESSION

(1:50 p.m.)

HAROLD WAYNE ROUSE, resumed.

DIRECT EXAMINATION

BY MR. MITCHELL: (continued)

MR. MITCHELL: Your Honor, I offer in evidence that which I have identified as Plaintiff's Exhibit 10 for identification. I would represent to the Court that this is a copy of the prime contract between the United States Government and American Marc which Teledyne subsequently acquired from the U. S. Government, and I asked Mr. Feldshuh if he would require me getting an authentication from the Government and he tells me that if he has a chance to look at the contract and show it to his people we may obviate the necessity.

THE COURT: Then it is received subject to a motion to strike if there is anything with it.

MR. FELDSHUH: Yes.

(Plaintiff's Exhibit 10 received in evidence.)

Q Mr. Rouse, I would like to address a few questions to the entirety of your meetings lasting from the 10th to the 12th of May 1971. During the course of these meetings, these three days of meetings, were you told in sum or in substance that the proceeds to American

Marc of the generator sets would belong to Teledyne?

MR. FELDSHUH: Objection.

THE COURT: Sustained.

Q During the course of these meetings, Mr. Rouse, were you informed that any other vendors or creditors of American Marc were to be paid from the proceeds of the generator contract, the second procurement year?

A No.

Q As a result of meetings on these three days and your discussions of the special account to be set up with Bank of America, what was your understanding at the termination of the meeting on May 12 as to how the Bank of America account would operate?

MR. FELDSHU: Objection.

THE COURT: Sustained.

Q During the course of these meetings was a statement made by Mr. Leonard or by Mr. Ogden to the effect that a pre-existing account was already set up at the Bank of America?

MR. FELDSHU: I object to that as leading.

THE COURT: What?

MR. FELDSHU: I object to that as leading. I object to that on the ground as to form.

THE COURT: Was anything said on that subject?

THE WITNESS: No.

THE COURT: Nothing was said on the subject as to the account?

THE WITNESS: No, we were told that they would set up a new special account.

Q Whenafter the termination of these meetings, Mr. Rouse, did you leave Los Angeles?

A I left late that afternoon -- I think it was around 5:30 or 6 o'clock in the afternoon.

THE COURT: On what day?

THE WITNESS: Of the 12th, which was a Wednesday.

Q And where did you go?

A I went back to Muskegon, Michigan.

Q And from this point onwards did you have any responsibilities for the carrying out of that subcontract?

A When I returned I wrote a letter back to Mr. Leonard on the 13th which finalized that. When I received it back I sent that along with other documentation to the responsible people within our company whose job it was to follow contracts, such as Mr. Coleman, Contract Administration, and also Finance and Legal. Then my responsibility from them on was through. Mr. Coleman made sure that the job was moved, set up and the units were produced in accordance with the contract.

THE COURT: Through Mr. Coleman.

THE WITNESS: Mr. Coleman reported to me in running the Walterboro plant, so he reported to me, and it was my job to supervise it and see that the job was set up and run.

Q Other than a supervisory capacity did you have any first-hand involvement in the carrying out of this contract from that time onwards?

A The only time we had a meeting in Walterboro with Mr. Leonard, I think sometime in the latter part of October o

the first part of November in regard to the delivery.

Q This is in 1971?

A In 1971.

Q At this time had Teledyne delivered under the second procurement year?

A No, we were -- we delivered our first units the latter part of November.

THE COURT: What was the purpose of the meeting?

THE WITNESS: The meeting was to be sure that we were going to deliver on schedule as we had committed that we would.

Q And did there come a time, Mr. Rouse, that a dollar figure was determined as the cost of the inventory which Teledyne was purchasing, from American Marc?

A Yes, we paid for on the invoices from Eon as the material was shipped to us, and finally at the conclusion of final shipment we did have a total figure.

Q What were the mechanics of determining how much Teledyne was to pay for the inventory?

A They gave us copies of their invoices that they had received from their suppliers and so whenever they shipped material to us we checked it to be sure that they charged us seventy-five percent of the value that they had paid for, and every shipment was checked like this by each individual

part.

Q At your direction did someone from Teledyne go and examine the inventory?

A Yes.

Q And who went to examine the inventory?

A Mr. Coleman and the controller went to Los Angeles to review the inventory -- I think it was a week or so after we made the deal, and then following that they also -- we sent a couple of people to New York, to Eon to review the material that was here at Eon.

Q In other words, was there inventory in both places?

A Yes, there was.

Q And do you recall the dollar figure which was ultimately determined that Teledyne was to pay American Marc for the inventory?

A It was around $195,000, roughly.

Q Are you sure of the exact dollar amount?

A No, because it varied a little bit. My memory is about a hundred a ninety-five thousand.

Q And did Teledyne pay for this inventory?

A Yes, we did.

Q And how was such payment made?

A The payment was made upon presentation of the invoices that we sent and the individual check based on each

shipment.

Q So payment was in cash.

A That is right -- by check.

MR. MITCHELL: Your Honor, may I have just a minute?

THE COURT: Certainly.

(Mr. Mitchell confers off the record.)

Q Mr. Rouse, was there ever a discussion between yourself and Mr. Leonard as to payment of the inventory in a form other than a cash or check form, such as an offset against amounts to be due under the subcontract?

A At the time that we negotiated the price of the inventory Mr. Leonard stated that they were in a crunch -- I am using that word -- a crunch position.

THE COURT: That is your word or his?

THE WITNESS: His word -- they were in a cash crunch, and they needed the cash and they could not consider an offset, and so we agreed that we would pay in cash, rather than hold it and charge an offset against shipment when we shipped the late units later on. Of course I did this on the basis of the understanding that there was money available to pay us, that it would be available to pay us.

Q Did there come a time, Mr. Rouse, when your supervisory responsibilities in connection with the subcontract when the subcontract terminated?

A Yes.

Q And what time was that?

A February 1, 1972.

MR. MITCHELL: I have no further questions.

MR. FELDSHU: I am certainly taken by surprise. I understood that Mr. Mitchell was going to take a full hour between 2 and 3, and I guided myself accordingly.

THE COURT: Nobody is criticized for taking less time.

Would you like a few minutes to gather your thoughts together.

MR. FELDSHU: May I, sir?

THE COURT: Yes. Let me know when you are ready.

MR. FELDSHU: I will. Thank you, your Honor.

(Short recess.)

CROSS-EXAMINATION

BY MR. FELDSHU:

Q Mr. Rouse, are you still employed by Teledyne?

A Yes, sir.

Q In what capacity, sir?

A I am the vice president and general manager of the Teledyne Continental Motors, General Products Division.

Q And where is your office located?

A In Muskegon, Michigan.

Q Do you still report to Mr. Richardson, the president of the company?

A I report to Mr. Richardson. He is now a group executive of Teledyne.

Q Is there anyone else to whom you report?

A No.

Q Have you been continuously employed by Teledyne since February 1972?

A Yes.

Q Since February 1972 to the present time did you hold any other positions with Teledyne other than the ones you have described?

A No.

Q With regard to your p esent work at Teledyne, was it a part of your responsibility to review the events with regard to Teledyne and Eon and the subcontract as the same existed in the May of 1971?

A No.

Q Will you keep your voice up, please, Mr. Rouse?

A No.

MR. FELDSHU: With your Honor's permission, may I just approach a little nearer?

THE COURT: Yes.

(Mr. Feldshu steps nearer to the witness stand.)

Q With regard to the present litigation, when for the first time were you spoken with about the commencement of this litigation?

A As I recollect, it was sometime in June of 1972, about the end of June, I guess.

Q Was it your habit to keep your daily timer in the year 1972 as you did in 1971?

A That is right.

Q And with regard to your practice of keeping the daily timer did you note the occasions when your job changed and your responsibilities changed?

A I can't remember exactly.

Q With respect to the practice which you employed in connection with your daily timer, was it your habit to record each event of importance that occurred on a particular day?

A I would have to say no. Normally what I would use it for was when I was at a meeting or something like that, to keep record of, you know, things that I wanted to write reports on.

THE COURT: Things that you wanted to write reports on?

THE WITNESS: Reports on or things I wanted to make a record of.

Q Did you have an appointment book besides this daily

timer?

A Yes, I do have a general appointment book, right.

Q Is that kept by your secretary?

A That is kept by myself.

Q By yourself?

A That is right, and my secretary.

Q And in connection with that appointment book do you make an legends in it with regard to events that transpired on a particular day?

A I may or may not. It is according to what the event is.

Q Did you have any occasion to make any entry -- I will withdraw that. Was it your practice back in May of 1971 to have this same appointment book and make your appointments noted in that book?

A I would have to say yes for meetings and things, internal meetings within the company, and if I was traveling.

Q With regard to your daily timer, as I understand it, sir, you left Michigan -- that was the place --

A Yes.

Q -- to come to California on the night of May 9; that is Sunday night --

A That is right.

Q -- is that right, sir?

A Yes.

Q I take it, sir -- and I am sure you will agree -- that with regard to the page marked Sunday, May 9, 1971 there is no entry here with respect to the fact that you were leaving for Los Angeles on that day (indicating)?

A That is right.

Q Also looking at this page of May 9, 1971,I see items in your handwriting, in the following legend: "B." "C." and "D."

A That is right.

MR. FELDSHU: May I have marked for identification the page of Sunday, May 9, 1971 as Defendant's Exhibit A for identification.

THE COURT: I thought it was in evidence.

MR. FELDSHU: I amsorry, sir.

THE COURT: Sunday, May 9, 1971?

MR. FELDSHU: That is right.

THE COURT: It is in evidence.

MR. FELDSHU: That is my mistake.

THE COURT: That is Plaintiff's Exhibit 1 -- the second page of Plaintiff's Exhibit 1.

THE CLERK: The whole book was marked as Plaintiff's Exhibit 1.

MR. FELDSHU: I am sorry, sir. You are correct,

and I am mistaken.

Q Now sir, looking at Plaintiff's Exhibit 1, referable to the page, May 9, 1971, you have noted that in your handwriting the letters appear "B.","C." and "D." Was there an "A"?

A I can't remember.

Q Was it your habit to just write "B", "C" and "D" without an "A" preceding it?

A I would assume that it is on another page because there is no page missing, as you will note.

Q You have looked now at Saturday, May 8, and you see no entry as to A, do you, sir?

A (After examining) Evidently A was missed.

Q Well, was it possible that "A" referred to Mr. Walter?

MR. MITCHELL: Your Honor, at this time I would like to impose an objection because I think the witness is being misled. The page merely preceding does have a "A" on it. I am referring to the line that is equivalent to number "4", in the left-hand margin under "20". It looks like "present time" -- I believe that is "A" -- I am sorry, under "2" and beneath that is "A. 1.5 K.W. another 4500 to go".

The "A" is not circled but it is there nevertheless.

THE WITNESS: That is a correct observation.

Q Now let us look at May 8 again, so if you were mistaken before let us correct it (indicating).

A Yes, here it is (indicating).

Q I see. Now with regard to the daily timer, we have a page which is marked or bears a legend "Saturday, May 8, 1971", is that right, sir?

A That is right.

Q And then you state there is a "A" here, is that it?

A Yes.

Q Would you read for the record what "A" says, please.

A "A. 1.5 K.W." --

THE COURT: Does that relate to the 20 above?

THE WITNESS: It relates to "2" above.

THE COURT: Is that "2."?

THE WITNESS: "2."

THE COURT: Read that "2.".

THE WITNESS: "Present time have (4)".

Q And there is a number preceding that?

A That is "2.A.".

That is down below.

Then it says "1.5 K.W."

A 168

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THE COURT: That means "kilowatt"?

THE WITNESS: Kilowatt -- "another 4500 to go (was 8500 contract)".

Q Will you continue, please.

2-3 A "Have been buying about 4200 to 4300 each year. Open end".

Q Will you tell us kindly to what transaction is this legend that you just read.

A That has to do with the contract that we negotiated.

Q That you were about to negotiate?

A That is right.

Q Had Mr. Walper given you this information?

A No.

Q You had met with Mr. Walper on Friday or spoken with him on Friday, May 7?

A On the telephone, and he said there were from 4000 to 4500 that somebody wanted to subcontract.

Q And it was in this very same conversation, was it not, where the $5 per unit came up as a commission to Mr. Walper?

A That is right.

Q Now it is a fact, as you have testified, that 50 percent of your work at that time was in connection with government procurement, was it not?

A To clarify that point, 50 percent of my responsibility was for the vantaging of contracts or work that was under government contract, and 50 percent was roughly for commercial contracts.

Q I see.

A Our business at that time was about 50-50.

Q Fifty percent with regard to government procurement and the other fifty percent with regard to civilian needs and production for civilians?

A Right.

THE COURT: You say "government procurement" and he says "government contract". Is there any distinction?

THE WITNESS: The same thing. This was government contracts.

THE COURT: You don't mean to give a different meaning to that?

THE WITNESS: No.

THE COURT: This is your way of expressing it.

THE WITNESS: Government contracts.

Q In connection with your business you were familiar, were you not, with the IFB?

A Do you mean IFB?

Q Invitation for bid?

A Yes.

Q That is what it means?

A Right.

Q And in connection with that invitation for bid you were, of necessity, familiar with the kind of contracts that the government would give in response to a bid; is that so, sir?

A I would say the answer would be "yes" but there are several different types of contract with the government.

Q Was the fact, to your knowledge, that in March of 1971 Teledyne had bid on the very same item, the very same kind of generator set that you were about to undertake negotiations in May of 1971 -- that is correct, isn't it?

A Yes, we had submitted a bid.

Q In connection with that bid did you have occasion to examine the documents referable to that bid?

THE COURT: You mean the earlier bid?

MR. FELDSHU: The earlier bid, yes, the March 1971 bid of Teledyne.

A I did not personally review the IFB.

Q Were you informed about it in the regular course of business of Teledyne?

A That is right.

Q In connection with the information that you received, who passed that information on to you?

A The Contract Administration.

Q Did Mr. Coleman have anything to say about that?

A I don't understand what you mean by that.

Q Did Mr. Coleman discuss with you a response to the IFB in connection with the March 1971 bid of Teledyne?

A Mr. Coleman discussed the delivery schedule.

Q And the Contract Administration discussed the price of the bid quote, is that right?

A That is right.

Q What was that bid quote?

A I can't remember.

Q Well wasn't it $349.00, sir?

A I can't remember.

Q The fact that I state to you that it was in that area of $349.00 per unit does not refresh your recollection at all?

A No, it does not.

Q In connection with your visit of May 1971 when you came to Los Angeles, didn't you have in your mind what Teledyne had bid in March for this particular unit? Did you have that in your mind?

A I had in my mind what we felt that we could negotiate the contract for and come out okay on.

Q What you now stated was in your mind, didn't you

have some beginning points and ending points within which you could negotiate?

A That is true.

Q And wasn't one of those beginning points the fact that on March 1971 Teledyne bid to the government that it could deliver these very same kind of things, the 1.5 K.W. generator sets at a price of $349 per unit?

A I told you I couldn't remember the price.

THE COURT: You cannot remember the price now but he is suggesting at the time you negotiated with Mr. Leonard you must have remembered the price.

THE WITNESS: Well I am sure at that time I did because I reviewed the price before I went to the West Coast.

THE COURT: That is what he is getting at.

THE WITNESS: Right. I couldn't get what he was trying to find out.

Q Apart from the number itself that I mentioned, you are quite certain that you had in your mind to bid the price that Teledyne had made in March of 1971.

A What I had in my mind was I reviewed that bid price, and I came up with the parameters that we could live with.

THE COURT: What he is suggesting is the logic of that situation must be that you also had that figure in

mind, whatever it is.

THE WITNESS: Fine.

THE COURT: And you agree with that.

THE WITNESS: I agree with it.

THE COURT: He agrees.

MR. FELDSHU: Thank you, sir.

Q By the time that you had decided to go to Los Angeles you also had in your mind the $5 that you had agreed to pay to Mr. Walper?

A That is right.

THE COURT: Had you agreed to pay it at that time?

THE WITNESS: No. But I had it in my mind because he told me that he would not put me in contact with the other parties unless we would agree to that.

THE COURT: Then you had agreed -- the affect of going to the meeting to morally assume the obligation.

THE WITNESS: Morally, if we made the deal. I had no obligation to pay him $5 a unit unless we had the arrangement.

THE COURT: Right.

Q And did you make a record of that --

MR. FELDSHU: I will withdraw that, your Honor.

Q Does the fact that in your daily timer for the date, Friday, May 7, 1971,you made a record of your talk with

Mr. Walper -- is that right?

A (After examining) That is right.

Q And you also wrote -- and I direct your attention to near the bottom of the page, you wrote the figure "5.00" -- is that right?

A Right.

Q And was that figure intended to reflect the arrangement with Mr. Walper if a deal was made?

A That is right.

Q And also up on this page, on Friday, "Sub-contract GFE" -- what does that mean?

2-4 A It meant some of the components were government furnished -- the government furnished equipment.

Q Mr. Walper told you that, or did you know that from the fact that Teledyne had bid in March 1971?

A He told me that.

Q He told you?

A Yes.

Q And he also mentioned something about, as I read it here "Tooling-some inventory"?

A Yes.

Q Is that right, sir?

A That is right.

Q And what is the next word?

A "Frame".

Q And the words after that?

A "Gas Tank".

THE COURT: Does anybody have a Xerox of this?

MR. MITCHELL: I do not have a Xerox of it.

MR. FELDSHU: May I, your Honor, move these pages be marked for identification so we can get them Xeroxed?

THE COURT: It is in evidence.

MR. FELDSHU: I am sorry.

THE COURT: I understand the whole book is in evidence.

MR. FELDSHU: Is that so?

MR. MITCHELL: Correct.

MR. FELDSHU: Okay, fine.

Q Then in that record, sir, now referring to the page of May 7, 1971, how long was this conversation with Mr. Walper?

A I can't remember exactly but I will say maybe 7 or 8 minutes -- 10 minutes, something like that.

Q Sir, weren't you familiar at that time with the rules and regulations issued by government agencies, and particularly the Mobility Command of the U. S. Army?

A I don't know what you are trying to relate that to.

Q You knew there were rules and regulations issued by the various procurement agencies of the government?

A I would say yes, when you are dealing direct with the government, right.

Q Right, and also wasn't the Mobility Command one of the procuring -- I am sorry, I will withdraw the word "procuring" -- one of the procurement agencies of the government at that time?

A Yes.

Q And you knew it to be such?

A I had no idea when he talked to me that night who the contract -- what agency the contract was with.

Q But there came a point in time when you did learn about it?

A When we finally saw the prime contract, yes.

Q Wasn't it your testimony that Mr. Walper told you that he knew that Teledyne had submitted a bid back in March of 1971?

A That is right.

Q Well didn't you know that that bid was submitted to the Mobility Command?

A Yes.

THE COURT: I imagine the other government agencies can use the same generator.

MR. FELDSHU: Except, sir, we are now talking about the fact that the witness testified that he was told by Mr. Walper that Walper knew that they had submitted the bid.

THE COURT: Yes.

MR. FELDSHU: And I am trying to pinpoint this area as to his knowledge of the rules and regulations of that agency.

THE COURT: All right.

BY MR. FELDSHU:

Q Did you have occasion or in substance to say anything to Mr. Walper about a commission to be paid to him?

A Yes.

THE COURT: I do not want to interfere with your cross-examination of the witness, Mr. Feldshu, but it would be much easier for me to follow you if you would give me the regulation you are talking about so that I can read it.

MR. FELDSHU: Well I will suspend with that area of interrogation. I do not have the regulation right now.

THE COURT: I do not want to interrupt your examination, but I thought you had it.

MR. FELDSHU: No, I do not but I will see to it that your Honor gets a copy.

THE COURT: All right, go ahead with your cross-examination. I thought you had it in court.

MR. FELDSHU: Thank you, sir.

Q Mr. Rouse, did you advise Mr. Coleman that -- I will withdraw that.

It is my recollection, sir, that you testified that you told Mr. Coleman that a commission of $5 was to be paid to Mr. Walper if the deal went through.

A I told him that Mr. Walper said that he wanted a $5 commission if the deal went through.

Q And did you tell him that when Mr. Walper said that --

A Yes.

Q -- did you tell him your response to Mr. Walper, if there was any?

A I did not respond to Mr. Walper whether wewould give it to him or not.

Q You just went to Los Angeles, as his Honor pointed out --

A That is right.

Q -- and made the arrangements with Mr. Coleman?

A I do not understand that last statement about I made arrangements.

Q You made arrangements with Mr. Coleman to come to Los Angeles?

A I met him in Los Angeles, that is correct.

Q That is correct, isn't it?

A Yes.

Q That was after the conversation with Walper and after you reported the conversation to Mr. Coleman?

A That is right, and I asked him on Saturday to meet me on Sunday.

Q Right. Did Mr. Coleman, in words or substance, mention anything about any rule or regulation of the Mobility Command or any other agency with regard to paying a commission --

A No.

Q -- to anybody?

A No.

Q With respect to the Contract Administration Section of Teledyne, what was its function? You have used the words "Contract Administration" on several occasions. What body was that?

A It is a body within our organization that takes a contract and administers the contract once you have a contract.

Q Does it have anything to do with examining the contract before it is actually signed off and written and become binding on Teledyne?

A In the case here we were dealing directly with the

government. The answer would be "yes".

Q In March of 1971 you intended to deal directly with the government, did you not?

A That is right.

Q With respect to the Contract Administration people, who were they at that time with whom you were in contact?

A Well, there were several. Mike Saunders; Jerry Mulder.

Q Was there a Mr. Anderson?

A Mr. Anderson came into the picture after we got the contract.

Q I see; but he was affiliated with that particular seciton of Contract Administration?

A That is right.

Q Did you mention to either Mr. Saunders or the other gentleman, whose name I have forgotten, the request of Mr. Walper to be paid $5 commission?

A The answer is "no."

Q I understan-d, sir, that in this period of time you had supervisory function over some five plants as the vice president in charge of operations?

A That is right.

Q And with regard to this particular possible sub-contract you personally undertook to take charge of those

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negotiations?

A That is right.

Q With regard to the Contract Administration Section you were in touch with them, were you not, prior to May 12, 1971?

A I was in touch with our in-house counsel.

Q That was Mr. Kotts?

A Yes.

Q And with respect to Mr. Lewis, was he just connected with the finance department?

A He was in charge of Contract Administration also.

Q So then, as I understand it, we now have Mr. Saunders, Mr. Lewis and another gentleman --

A Yes.

Q -- who were in Contract Administration?

A That is right. We had many people come in.

Q Yes. But with respect to the people with whom you were first referable to this subcontract, Mr. Rouse, did you mention to Mr. Lewis about Mr. Walper's request of $5 commission on each unit?

A I cant remember whether I did or not.

Q Wasn't it essential from the point of view of administering this contract that he be informed of this, or that somebody in Contract Administration be informed of that

arrangement?

A Not necessarily. I had the authority to make the arrangements on the contract.

Q Had you done that previously?

A I had done that previously.

Q And in connection with government procurement work?

A This was not government procurement work. This was a commercial sub-contract with another person.

Q To be furnished to the government of the United States?

A To be furnished to the government but it was a commercial contract the way we considered it, to be on a purchase order.

Q Did you take the trouble upon the occasion of Mr. Walper speaking with you to contact Mr. Kotts or any other in-house counsel as to the propriety of such an arrangement?

MR.MITCHELL: Your Honor, I object to the form of that question. "Did you take the trouble" implies that there is an obligation that it should have been done.

MR. FELDSHU: All right.

MR. MITCHELL: And if it wasn't done it was done through laxity of something of that sort. I object to the form of that question.

Q You did not speak to Mr. Kotts?

A As I said, I talked to Mr. Kotts.

THE COURT: You did talk to him about this matter?

THE WITNESS: As I said, I cannot remember whether I did or not. Mr. Kotts I am sure will be on the stand and maybe he remembers.

Q Is Mr. Kotts in the room?

A Kotts is in the room.

Q In this room?

A Yes, he is.

Q Oh!

THE COURT: Do you want to exclude Mr. Kotts?

MR. FELDSHU: I know how your Honor feels about it.

THE COURT: Do you want to exclude him?

MR. FELDSHU: I just want to call your Honor's attention for whatever it is worth.

THE COURT: I think, Mr. Kotts, you had better join your friend outside.

(Mr. Kotts leaves the courtroom.)

BY MR. FELDSHU:

Q Mr. Rouse, when you went to Los Angeles did you take a copy of the Teledyne print with you, the one for March 1971?

A I did not.

Q What papers, if any, did you take?

A I took the work-up sheet that we had on the prices for what I was going to negotiate, and other than that I really didn't take very much at all.

Q Did you instruct Mr. Coleman to bring any particular papers with him?

A I can't remember instructing him to bring any papers, no.

Q With regard to the work-up sheet that you have just described --

A Yes.

Q -- what itemization that work-up sheet contain?

A Well, such as our projected material cost, labor cost, overhead cost, profit, G and A.

Q Had you a file on this type of material which was related to the March 1971 contract?

A That is right.

Q That is so, is it?

A Yes.

Q And it was that file to which you addressed yourself, is that correct?

A That is correct, the exception being that the first quotation was for 2300 units, and what we were talking about was something in excess of 4,000.

Q I see.

THE COURT: Does that permit you to d it more cheaply?

THE WITNESS: It permits you to possibly do it more cheaply, that is right.

Q Sir, so then, as you testified, you arrived in Los Angeles on the night of May 9, Sunday night, and there you met Mr. Coleman, is that right?

A That is right.

Q Upon that occasion when you were speaking with Mr. Coleman did he say anything to you with regard to the $5 commission that you would pay or you would pay if there was a deal to Mr. Walper?

A I am sure we discussed it.

Q Did he make any mention with regard to any rules and regulations of the government with respect to the payment of commissions to someone?

A As I remember, no.

Q The Walterboro plant -- is that the way you pronounce it?

A Yes.

Q The Walterboro plant was that plant devoted to the making of various products for the government?

A No, it was mostly commercial work.

Q Was that a plant, however, that had Teledyne gotten the bid on in March 1971, that would be the plant that would make the 1.5 generator set?

A That is right.

Q And that was the arrangement at that time?

A Yes.

THE COURT: For that quotation?

MR. FELDSHU: Right, sir.

Q Mr. Rouse, on the morning of May 10, 1971, that was the first time you had a face to face meeting with Mr. Walper?

A That is right.

Q And that meeting was in the presence of Mr. Coleman?

A That is right.

THE COURT: That is the breakfast meeting?

MR. FELDSHU: That is the breakfast meeting, yes, your Honor.

Q Upon the occasion of that meeting did you ask Mr. Walper to disclose the identity of the party with whom you might be negotiating?

A Yes, we did.

Q And what was his response?

A He said that he couldn't do it. The person would

be arriving and he would tell us who it was.

Q Did you discuss anything further about the $5 commission?

A No. We might have discussed it. I can't remember exactly.

Q Was there any point in time during these discussions when you stated in words or substance to Mr. Walper that $5 was either too high or too low or something of that sort? Did you try to negotiate that figure with him?

A I would say no, that we had pretty well fixed our mind that $5 was a fair value.

Q And your mind in that connection was fixed Friday, May 7, was it not?

A I wouldn't say that.

Q Well when did you get it fixed for the first time?

A I would say somewhere along the line when we found out who the company was and how many units were remaining.

Q That would be May 10.

A That is right, May 10.

Q Do I understand you, sir, that on May 10, you still had a question in your mind whether the amount would be $5 or something else as to commissions?

A That is right.

Q What other amount could you possibly have had in your mind?

A I don't know. Like I say, we hadn't agreed upon an amount. Until I agree to a figure it is never cemented in my mind.

Q But to your mind it was only a figure.

THE COURT: You mentioned no other figure?

THE WITNESS: No.

THE COURT: Nor did he.

THE WITNESS: No.

Q With regard to the May 10, 1971 page, is there any mention here about meeting with Walper for breakfast at all?

A No. All of these notes here were made -- started from Saturday, after we went to the -- after we went to American Marc -- all these pages (indicating). Each --

Q And -- well let me understand that -- excuse me, I did not mean to interrupt. Had you finished your answer?

A In other words, each page is not exactly what was discussed that date as such.

Q I see. So therefore when you looked at these notes and you said you had a discussion on a particular day, that did not necessarily follow from the fact that there was a date line up at the top of the page?

A That is true.

Q Sir, can you tell me what "first article" means -- that legend or words?

A What that would mean, normally they require first article inspection, some spacial test on a unit, that is what it means.

THE COURT: I did not get that.

THE WITNESS: I don't know what you are getting it from.

Q Well let me show you what I am getting at.

I direct your attention to Thursday, May 13, in the daily timer (indicating), and I ask you, sir, would you kindly look at this page and read what you have here -- to yourself.

(The witness examines.)

Q I ask you, sir, does the legend on May 13 -- Thursday, May 13, 1971, relate to the 1.5 K. W. generator sub-contract that you had negotiated?

A It did.

Q Sir, will you kindly read to his Honor this legend that appears on that page.

A It says, "Talked to St. Louis -- They said if for any reason given a copy of P. O. might want a first article."

THE COURT: Who said that?

THE WITNESS: This was Leonard talking to St. Louis.

Q Leonard?

A Yes, because I couldn't talk to St. Louis.

THE COURT: Is St. Louis the government?

THE WITNESS: Right. And it says "His man will take a set of parts and go to Walterboro".

THE COURT: What?

(Record read by the reporter.)

THE WITNESS: Right.

Q Sir, when Leonard reported the conversation to you, what did you understand to mean when he said to you "might want a first article"?

A What I understood was by changing the factory from where the units were to be built they might want a first article inspection, of the first one that we produced.

THE COURT: "First article" means the first --

THE WITNESS: The first generator set.

THE COURT: I see.

THE WITNESS: The first generator set manufactured in our plant might have to be inspected by a spacial test run.

Q With regard to producing a product which is to be the subject of a first article test, are the costs of that

article on that particular piece, are they generally higher than the average cost of the remainder as they are produced?

A Normally when you start production, always the first one is more expensive from actual cost.

Q Well, address yourself to this particular sub-contract, please, and I ask you with regard to your legend here that you have written about the "first article", could you tell me, sir, how much more the first article would be that you produced -- you, Teledyne under this contract -- than the price or the cost that would otherwise obtain?

A I couldn't tell you exactly. So far as the production of it, the costs wouldn't vary too much but it would be produced in our plant and then sent to a testing laboratory, and they in turn would perform spacial tests, which would be additional cost.

THE COURT: Did you have to pay for that?

THE WITNESS: It was agreed that American Marc would pick up the first article inspection test if required.

THE COURT: You didn't have to pay for it?

THE WITNESS: We did not have to pay for it.

THE COURT: As it turned out, was it required?

THE WITNESS: I am trying to remember -- Mr. Coleman can verify it, but as I remember there was one that was required.

Q With regard to American Marc picking up the tab for this inspection, that tab would include shipping the item to some place and having somebody look at it and then getting it back?

A I would assume so.

Q Sir, I am addressing you to the cost of producing this first unit.

THE COURT: That cost would not be involved.

MR. FELDSHU: American Marc would not be obliged to pick up the tab for that.

THE COURT: American Marc is picking up the tab for the first article inspection.

MR. FELDSHU: Just for the inspection.

THE COURT: Not for the unit.

Q Now with respect to the unit itself, isn't it a factthat it cost more to produce the first article in the sense that you used it in this writing here than the average cost as you go down the line and keep repeating and manufacturing the rest of it?

A As I said --

MR. MITCHELL: Your Honor, I am going to object to that at this point. First of all, I cannot see where this is within the scope of direct examination.

Secondly, the cost of a first article is not the

same as in the case of producing all the articles.

THE COURT: No.

MR. MITCHELL: I believe he is asking the witness what the cost of produc[illegible] the first article would be.

THE COURT: I assume what he is referring to is that the first thing costs more than the next thing.

MR. FELDSHU: Yes.

THE COURT: Because on an accounting basis you run the cost.

THE WITNESS: Over an average price.

THE COURT: So you don't know what the first one cost?

THE WITNESS: I do not know what the first one cost.

THE COURT: It is 3 o'clock now.

MR. FELDSHU: Yes, your onor. Thank you very much.

THE COURT: I have a motion for a preliminary judgment tomorrow morning that will probably take us to 11 o'clock, so you might as well come here at 11. So far as I know I have nothing in the afternoon so we will go to 4:30 at least.

MR. FELDSHU: Thank you very much, your Honor.

MR. MITCHELL: Thank you.

(Adjournment to July 16, 1974 at 11 A. M.)

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TELEDYNE INDUSTRIES, INC.,
Plaintiff,

vs.

EON CORP., ODIF PODELL, SIMON SRYBNIK, NICHOLAS ANTON, SAUL WALLER and KEPNS MANUFACTURING CORP.,
Defendants.

73 Civ. 3261

New York, July 16, 1974:
11.15 A.M.

Trial resumed.

H A R O L D W A Y N E R O U S E, resumed.

CROSS EXAMINATION CONTINUED

BY MR. FELDSHUH:

Q Mr. Rouse, last night when we had stopped I was asking you about the reference to the first article as the same appeared in your Daily-Timer under date May 13, 1971. Would you kindly look at your Daily-Timer, sir?

Sir, with respect to obtaining a government contract, what does the contractor do in order to qualify as a contractor to supply products to the government from the point of view of qualifying itself? Are there any inspections made?

A Yes.

Q Who makes those inspections?

A It varies according to the contract. Some of the contracts may stipulate that the unit be sent to an outside testing laboratory. Sometimes it may stipulate that an in-house test is satisfactory.

Q Does the government send to the plant, if it is an in-house test, inspectors to observe the test?

A If it is in-house, yes, they would send inspectors to observe it or the resident inspector would observe the test.

Q Before components are put into the first article are those components inspected by anyone?

A Yes, they are inspected. This varies. The government has a right to inspect the parts or they can depend on the company themselves to perform the inspection and they validate the inspection.

Q And in this particular case now, referring to the 1.5 generator set, do you know whether on May 13, 1971, Teledyne was a qualified producer of those generator sets?

A We had never produced 1.5 kw general sets.

Q As a consequence of the non-production prior to May 13, 1971, is it your testimony that at that point in time Teledyne was not a qualified producer?

A Clarification. They were not an approved producer for the 1.5 kw generator.

Q What was required in order to become an approved producer?

A On May 13 it was unknown exactly what we had to do to qualify.

Q Was the fact that American Marc had been qualified and did produce the 1.5 generator set, did that have any bearing upon your, Teledyne, being qualified?

A It could have.

Q Do you know whether it did downstream?

THE COURT: Afterwards, is that what you mean?

MR. FELDSHUH: Yes.

A To the best of my recollection, during the discussion of May 13 Mr. Leonard felt that possibly he could get us qualified without performing a first article test.

Q Did that come about?

A To the best of my recollection we had to perform a first article test to qualify ourselves.

Q And that was for Teledyne to qualify itself; is that right?

A That is right.

Q When did that first article test take place?

A I can't remember exactly.

Q How long did it take you, meaning Teledyne,

to arrive at a position of qualification?

A I can't remember exactly.

THE COURT: Maybe you don't want to tell the witness what you are driving at, but would youtell me at the side bar what you are driving at, because I find it very puzzling.

MR. FELDSHUH: Yes, your Honor.

(At the side bar.)

MR. FELDSHUH: Your Honor, I am trying to establish here that Teledyne was so anxious for this club contract because the Walterboro client was in considerable difficulty and was a civilian producer and they were willing to do almost anything.

(In open court.)

BY MR. FELDSHUH:

Q Mr. Rouse,you can give his Honor no estimate of time, can you, from May 13,after that date,as to the length of time that it took Teledyne to qualify itself with regard to the first article; is that right?

A That is right.

Q On or about May 13, 1971, isn't it a fact that the Walterboro plant had been devoting itself to the manufacture of what I call civilian products as distinct from products for the United States Government that you

have testified about?

A They also produced some military products.

THE COURT: Primarily what was the breakdown?

THE WITNESS: I wouldsay roughly approximately somewhere in the area of 40 per cent military, 60 per cent commercial, something like that.

Q Was it the Walterboro plant that was going to produce the first article, as far as you know?

A Yes.

Q This entire sub-contract was assigned to Mr. Coleman, who was head of the Walterboro plant; is that right?

A That is right.

Q With regard to the components making up this 1.5 generator set, did any of those components come from American Marc's plant in Los Angeles?

A As I stated earlier in my testimony, some of the surplus inventory did come from there.

Q Did there come a point in time when a request was made by the Walterboro plant to have American Marc send an engineer down to Walterboro?

A As I remember, there was a person sent there. I'm not sure whether he was an engineer.

Q Do you know what the function of that person was?

What was he doing?

A As I remember, it was to help them build a first unit for qualification.

Q Isn't it a fact that in March, May and June of 1971 the Walterboro plant from the point of view of production was not going on at full blast, was not engaged in a full-production schedule; isn't that true?

A I don't understand that question.

Q Was there in the spring of 1971 a period of time when the full-production facilities of Walterboro were not being used; isn't that a fact?

A That is a question that is hard for me to answer because when you say the full production, we had several products and some of them were at full capacity.

Q And the overall business that Walterboro was doing,weren't you looking in the spring, I mean Teledyne, to get business into that plant, get work into that plant?

A Continually; we were trying to find more business for plants continually.

Q With regard to this subcontract, is it the fact that you were first contacted on May 7 by Mr.Walper; is that right?

A That is right.

Q And within three days you had a subcontract

arrangement; is that right?

A That is right.

Q What was the cause of the haste to make a 1.5 million dollar contract?

A I said that is right. Two, three days later, that is not correct. We did not have a contract until May the 12th, and I was contacted on the 7th, which was five days.

Q Excuse me. Let me take the number of business days, then.

A And the reason -- we worked Saturday and Sunday also on this thing.

Q So did we, Mr. Rouse. I want you to know.

A But the reason for this haste was that Mr. Walper had told me that they had to subcontract this immediately and this was contrived by Mr. Leonard when I met with him on Monday morning on May 10th. He said if we were interested in it we had to take a quick deal because they wanted to liquidate the company and if we were not interested in it they were going to find someone else to negotiate a deal with.

Q You agreed to speed up your own work in order to find out whether you were interested in it or not?

A That is right.

Q Was there any other reason than that which Mr. Leonard gave you for you to hurry to Los Angeles?

A None whatsoever.

Q In other words, Walterboro was going full-speed ahead at that time?

A They had enough work to sustain them through the year.

Q Isn't it a fact that there was considerable downtime at the Walterboro plant in the spring of 1971?

A That is not correct.

Q To what extent was there any downtime?

A There was only the normal shutdown for vacation and inventory that year.

Q I am now talking about the spring of 1971.

A The full year, I'm speaking, sir.

Q I'm talking about the spring of 1971.

A The plant ran continually.

Q Throughout the spring of 1970?

A That is right, sir.

Q Didn't run to full capacity?

A Like I said before, it's difficult, full capacity. Some product lines yes, some product lines no.no.

THE COURT: Referring to this job.

THE WITNESS: That's right.

MR. MITCHELL: Your Honor, Mr. Feldshuh, I think I have been rather patient. Iwould like at this point to make an objection, although I realize that cross-examination is entitled to a great deal of leeway, I think Mr. Feldshuh is going so far beyond the bounds of the direct testimony, that he is at the very least making the witness his own for purposes of the questions he is now propounding.

It would seem to me that the questions are objectionable on the grounds that they are going beyond the scope of the direct, in addition to the fact that from what I can gather, they are irrelevant to the issues of this case.

THECOURT: He has a theory of relevance which he has expressed to me but the fact thathe makes the witness his own doesn't really make much difference

because by hypothesis he is a hostile witness so I will overrule theobjection.

Q On Friday evening, May 7, 1971 how much time did you spend on the phone with Mr. Walper?

A Somewhere in the area of six to ten minutes probably.

Q And it is the fact that within this six to ten minutes a $5 commission was mentioned?

THE COURT: You established that.

Q Did you also call Mr. Coleman that night?

A This I have testified to yesterday.

Q You did call him that very night?

A Yes.

Q Did Mr. Walper in words or substance say to you "You must be in Los Angeles on Monday"?

A He said that there was an urgency to subcontract this and he would like to have us there on Monday.

Q That is all he said, and did you ask him any reason for the urgency in that conversation?

A He gave me the reason, that they wanted it subcontracted immediately or they were going to go to someone else who had the potential possibility of making the generator sets.

Q Did you speak with Mr. Richardson, the president of Teledyne that night?

A As I remember, I talked to Mr. Richardson, it was either later that night or it was on Saturday morning.

Q How late is late, sir?

A Oh, I would say sometime probably 8 o'clock or the following morning. I can't remember which.

Q In that conversation, it is the fact you told him about Walper's request for a $5 commission?

A I explained to him not only that, I explained to him the potential of subcontracting this business, and also that we had bid a prior IFB on this, and that we had an opportunity to possibly pick up this subcontract.

Q And your prior IFB was limited to some 2300 units?

A Approximately, yes.

Q And with regard to this subcontract it would be 4,350 in round figures; is that right?

A That's right.

Q So it would be almost twice as much as the prior IFB?

THE COURT: I really don'tth ink you are accomplishing anything. All rhtese things are obvious to me.

MR. FELDSHUH: All right, sir, I will move right along. Sorry, sir.

Q Did you tell Mr. Walper that he'd have to sign an agreement?

A I didn't tell Mr. Walper anything like that.

Q Referrable to his $5 commission?

A No.

Q Did Mr. Walper tell you you'd have to sign an agrement?

A After I arrived in California and the deal was progressing he wanted an agreement signed.

Q Was one prepared and signed?

A Yes, there was.

MR. FELDSHUH: I call for the production of the agreement between Mr. Walper and Teledyne dated on or about May 12, 1971.

MR. MITCHELL: Mr. Feldshuh, that was previously marked at a deposition. I had not intended to introduce it and I don't have it with me in the room right now. It was marked at a deposition and I am sure you have a copy.

MR. FELDSHUH: I show you this paper, Mr. Mitchell, and I will ask you for the purposes of this record, will you concede that that is a true copy of the

agreement between Teledyne and Mr. Walper which copy was furnished by you or by your office to us.

MR. MITCHELL: I would certainly, Mr. Feldshuh, stand on whatever reputations were made in the deposition. Was this Mr. Rouse's deposition this was first introduced in? I would like Mr. Rouse to take a look at it. Certainly if it was marked, if we produced it and it was marked I have no doubt as to its authenticity but would like Mr. Rouse just to look at it.

Q Mr. Rouse, I show you a paper and I ask you, sir, on this paper, do you recognize a copy of your signature?

A I do my signature.

Q You do identify this as a copy of your signature?

A Right. But there has been changes made since the original.

Q Do you know whose handwriting that is?

A I do not.

Q Do you know what this legend is?

A I do not.

Q Except for the handwriting referred to in figures namely $5,438.75, and the legend -- that I cannot make out -- it would appear to be initials of some kind.

MR. MITCHELL: It appears to be Mr. Walper's initials ERW.

MR. FELDSHUH: That is what it looks like, Mr. Walper's.

MR. MITCHELL: What about this on the top?

MR. FELDSHUH: I haven't got that. That is the best photostat --

THE COURT: You are offering the typewritten part and not the pencil notations?

MR. FELDSHUH: That's right, sir.

THE COURT: All right, you have no objection.

MR. MITCHELL: I have no objection.

THE COURT: Received.

(Defendants' Exhibit A was received in evidence)

Q Sir, you testified on your direct examination that Mr. Leonard said to you that he would agree to the price of $360 provided you agreed, meaning Teledyne, to paying Walper his commission. Do you recall that testimony, sir?

A That's right.

Q With regard to Defendants' Exhibit A in evidence, is this the agreement that was concluded or signed upon that occasion?

A Which agreement are you speaking of?

Q With Mr. Walper.

A This is -- yes, this is the one with the exceptoins that I took a while ago.

Q Sir, does Teledyne have in its file a copy of this agreement as far as you know?

A Yes, we do.

Q Sir, you will note that this agreement bears date May 11, 1972.

A This is right.

Q Did Mr. Walper present this to you on May 11, 1972?

A This agreement was signed on May 11, 1971.

Q '71, I am sorry, sir. I am confused. 1971?

A That's right.

Q And the agreement and purchase order were signed -- the indictment with regard to inventory and the purchase order were signed on May 12th?

A That is right, sir.

THE COURT: But the converstaion with Leonard counsel has just referred to was May 11?

THE WITNESS: May the 10th.

THE COURT: May 10?

THE WITNESS: May 10, right.

Q Was Mr. Walper present when that conversation took place?

A Yes, he was.

Q Did Mr. Leonard in words or substance explain to you or tell you about any relationship he had with Mr. Walper?

A I can't remember any.

Q When Mr. Leonard said to you that he would agree to the $360 price provided you pay Walper $5 a unit, what did you say to that, if anything?

A I agreed to accept the $360 figure and pay Walper his $5. One clarification I'd like to make is that when Mr. Leonard -- he had -- not only Mr. Leonard but Mr. Walper -- Mr. Walper on Friday night had told me that he had been retained by American Marc to find someone to take the subcontract and when Mr. Leonard talked about the $360 and $5 commission, he also stated that Mr. Walper had been working with him to find someone to take the contract.

Q And as far as you were concerned, did you ask Mr. Leonard what he was paying Walper, if anything?

A I did not.

Q For this effort?

A I did not.

Q Did Mr. Leonard in words or substance say he was paying Mr. Walper anything?

A He said he was retained.

Q Did you understand from his statement and the circumstances of this conversation that Walper was going to be paid by American Marc for finding you?

A By retainment to me --

THE COURT: What difference does it make what he understood?

MR. FELDSHUH: I want to show your Honor that in the context of the provision I intend to call to your Honor's attention that it was the seller who employed this man and paid him his commission.

THE COURT: The seller clearly paid him and the seller equally clearly didn't employ him because the seller could not have employed this man to find this job because the job found the man.

MR. FELDSHUH: All right, sir. In any event I will rest upon the fact that the commission was paid.

THE COURT: That is obvious. Why spend 20 minutes proving something that is perfectly obvious?

MR. FELDSHUH: Your Honor, I --

THE COURT: You have got it in ten documents.

You have got it. Why keep worrying about the thing, asking him what he understood? It's perfectly obvious, one, that your client got this man to find these people and this fellow paid them. That is obvious.

MR. FELDSHUH: All right, sir, I will leafe that subject.

THE COURT: Please do.

MR.FELDSHUH: Very good, sir.

THE COURT: You will never get to Marths's Vineyard if you go on in this way.

MR. FELDSHUH: I am going to do the best I can, your Honor.

Q I ask you to look at the entry on May 12, Mr. Rouse. It is the fact that you have crossed out lines on theMay 12 entry; is that right, sir?

MR. MITCHELL: Excuse me, your Honor, we do not have a copy of page 12. Might I borrow --

MR. FELDSHUH: Here.

MR. MITCHELL: -- or take a look at a copy?

MR. FELDSHUH: Mine is falling down here. It is a full set. I thought you had it.

THE COURT: It's perfectly obvious that all the lines are crossed out.

Q Mr. Rouse, did you have a practice of crossing

out lines in your daily timer?

A Whenever -- if I had an item noted in my day timer to do something, and whenever it's accomplished, a lot of the times I will mark it out showing I have performed some kind of a function on that.

Q That is, sometimes you would do it?

A Well, I would say that a good majority of the time I did it.

Q With regard to the entries on May 13, there was nothing stricken out there, was there, sir, in connection with the first article, is that right?

A That's right.

Q And sir, with regard to the major points, the same appears -- on what date is that, sir, the major points? What date is that, May 11?

A Here (indicating).

Q It is the fact, is it not, that on May 13, you wrote a letter to Mr. Leonard which has now been marked in evidence wherein you made a reference to a bank account?

A Yes.

Q Is that right?

A That's right.

Q And the fact that none of this is crossed

out, what if anything does that indicate to you?

MR. MITCHELL: Your Honor, I will object to this line of questions as misleading. The testimony of the witness has been thathe had a check list of things that he was going to do, and occasionally would cross out things that -- items that he was supposed to perform. What Mr. Feldshuh is referring to now and questioning him as to why he did not cross it out is not listed as an item for him to perform, so I think the question is misleading in that respect.

Q Do you understand the question, sir?

A Yes.

THE COURT: I don't think the question is particularly misleading. Whether it's relevant or not is another question, but go ahead.

A To answer, sir?

THE COURT: You answer.

Q Can you answer, sir?

A The items on page 12 are items that I had to do something, and whenever I did them, I scratched them off.

Q When did you scratch that May 12 item off? Was it scratched out on May 12?

A I can't remember. I would assume that it was

following my return to Muskegon whenever I perform these. I know, for instance, on the one page where it says "CAll Wisconsin Motors about the engine and equipment." That was about the diesel engine line thatEon had developed and had for sale and I called them about that. So when I called them I scratched it out.

Q What about at the bottom of page 12 on the righthand side. Would you read what was crossed out there?

A Let's see number one, "They will call off 688 units or sets of material. Two, will set up with bank to disburse the funds. Jim will send a letter confirming that it is set up with Bank America to pay us first."

Q Is that first?

A First, f-i-r-s-t.

Q That is not the word "fast," is it?

A First, f-i-r-s-t.

THE COURT: What are you reading now, 13?

THE WITNESS: The 12th, sir.

MR. FELDSHUH: The 12th, your Honor.

A First.

Five -- excuse me, that's three -- "Jim will let us knwo about if they need someone from TCM to go to St. Louis."

Q Now, sir, is it your recollection that you crossed this out after you returned to Muskegon?

A Some of this here was crossed out when I made the notes on that one exhibit where we had about a page and a half of notes.

Q Is that one that was dated May 12?

MR. MITCHELL: Plaintiff's Exhibit 2, Mr. Feldshuh.

A They were handwritten notes that we left at Eon.

Q This word, as you say, is "paid first."

A First.

Q Now, you wrote this memo, Plaintiff's Exhibit 2 in evidence, on May 12, the date it bears?

A On May the 12th, and we presented it to the meeting that we had with Mr. Anton, Leonard, Coleman and myself.

Q Mr. Anton saw this?

A Yes. We gave Mr. Leonard a copy of it.

Q But did Mr. Anton see it?

A Yes, sir.

Q Did you see Mr. Anton looking at this paper?

A Yes, sir.

Q Now referring to Plaintiff's Exhibit 2 in evidence.

Upon your return to Muskegon, you did have your daily timer with you, did you not?

A That is right.

Q And you did consult with it, did you not?

A That is right.

Q You also, did you not, have a coyp of your May 12, 1971 notes?

A I would -- yes.

Q I'm sorry, sir?

A Yes, yes, I am sure I did.

THE COURT: When you say you are sure you did, you have no recollection, but you presume you must have?

THE WITNESS: I must have. We couldn't find it in our file later.

THE COURT: I have always noted that when a witness says "I am sure" that means he is not sure.

THE WITNESS: Because I wrote the May 12th -- excuse me, May 13 letter and some of the stuff there was included in it.

THE COURT: So you must have had it?

THE WITNESS: Right.

Q At any rate, you certainly had your timer?

A That is right.

Q When you wrote this letter of May 13, 1971, now referring to Plaintiff's Exhibit 6 in evidence, your Honor, looking at the first paragraph, it is the fact that the first paragraph refers to the bank account; is that right?

A That's right.

Q Now, sir, is there any statement in there with regard to Teledyne being paid first?

A No, it says there which will be used to pay the TCM invoices.

MR. FELDSHUH: I respectfully call that to your Honor's attention.

(Handing to the Court)

MR. FELDSHUH: That is paragraph 1, your Honor.

THE COURT: Paragraph what?

Q Sir, on the May 13 entry, there is a reference here, "His man will take a set of parts, go Walterboro." Is that a correct reading of your handwriting?

A That is right.

Q What set of parts were you talking about and who is the "his" man?

A "His man" was not identified. A set of parts was for the 1.5 kw.

Q When you wrote "his man" do you have a recollection now as to whom you were referring?

A I said the man was not identified.

THE COURT: "His man" means Leonard's I assume?

THE WITNESS: Leonard's.

Q Does "his" mean Leonard's?

A Yes, I am sorry, Leonard's.

Q So it was Leonard who was going to send a man down to Walterboro with a set of parts?

A That's right, and I think I testified to the same fact yesterday.

Q I don't remember. Sorry; I don't remember that.

Sir, on May 12, 1971, you did sign a copy, a duplicate original of the purchase order?

A I signed an acknowledgement copy.

Q An acknowledgement. I am sorry. Is that on the same face sheet as Mr. Leonard, where Mr. Leonard signs?

A No, it's a -- as I remember, it was the last page of the purchase order which was a different

color. It just acknowledged that a purchase order had been presented and accepted.

Q You did raad it very carefully, did you not, before you signed it?

A We had read it, yes.

Q When you say "we" you mean Mr. Coleman and you?

A That's right.

Q Sir, I now show you Plaintiff's Exhibit 3 in evidence; your Honor, being the purchase order M1257, and I ask you to look at the reference side which contains printed material. You note some ink circles, green crayon circles, some writing in red, what appears to be the word "deleted" or "delete." You see those, do you not, sir?

A Yes.

Q Did you write those?

A I did not.

Q Do you know how they came to be on the back side of this first page?

A I do not.

Q Where does this contract go, thepurchase order go?

A Mr. Coleman took it back to Walterboro with

him.

THE COURT: Mr. who took is back where?

THE WITNESS: Mr. Coleman.

THE COURT: Took it back?

THE WITNESS: To Walterboro.

THE COURT: Did those notations on it when you signed it?

THE WITNESS: I can't remember whether it did or not.

Q You did as you have testified, you read this Exhibit 3 carefully?

THE COURT: He did not.

A I said I readit.

HE COURT: He left out the word "carefully."

Q I'm sorry, all right. How many times did you read it, sir?

THE COURT: Did you read the printed stuff at all?

THE WITNESS: The fine print on the back I did not read.

THE COURT: I didn't think so.

Q Did you read the legend on the front at the bottom of the front?

A We read the pertinent data that was typed into

the purchase order.

THE COURT: Why do lawyers always assume that laymen act like idiots when they are signing papers? You have never read all the print in a paper when you have signed it.

MR. FELDSHUH: But I would read the legend on the bottom.

THE COURT: Yes, and then you wouldn't go around and read the fine print. Now come on, use your common sense.

Q All right. May I just for the record, your Honor, read into the record --

THE COURT: No, it's in the record.

MR. FELDSHUH: All right. So that we can identify the caution on the bottom of the page, it says merely --

THE COURT: The record is there. That's an exhibit in the record. You don't have to pay the stenographer daily rates to reproduce it.

T3 Q Now, sir, you did read the typewritten portion, didn't you?

A I said yes.

Q When you read the typewritten portion on the first page, did you say anything to Mr. Leonard about the terms of payment?

A As I stated earlier,we had already discussed about the terms of payment, about a special bank account being set up for the money that would flow from the second year procurement, which would be our own money, and we would be paid from the special account.

Q Sir, I direct your attention to the legend that appears under the word "Terms." Now, you understand what terms means in a purchase order, don't you?

A Let me see what you are talking about.

Q What would the word "terms" mean?

A Terms can mean many things.

Q Was it likely to mean a method or time of payment?

A In a lot of cases it means a number of days to be paid after date of invoice.

Q Now, look at the legend, the typewritten portion under the word "Terms." Will you tell us what that says, sir?

A It says "Net 30 Days."

Q That meant to you that it was to be paid, the generator set was to be paid for within 30 days after invoicing; is that right?

A That is right.

Q With regard to your conversation with Mr.Leonard, it is the fact, as you testified, that American Marc was to pay Teledyne after American Marc was paid by the government; isn't that right?

A I testified to the fact that we would be paid from the special account that they had agreed to set up from proceeds from the second year procurement following our shipment.

Q You understood that to mean that American Marc would have to get the payment from the government first to put in that account?

A I understood it to mean that we would be paid when they received the money; within, as the purchase order says, 30 days net we would be paid.

Q I'm sorry. I'm afraid you are confusing --

THE COURT: If the government didn't pay them within 30 days you wouldn't get it within 30 days. That is what he said.

THE WITNESS: That is not a correct statement

because they said they would receive the money prior to the 30 days and that is the reason we agreed to a 30 days' net.

Q Do I understand that 30 days' net is different from 30 days after invoicing; is that what you are telling his Honor?

A This is 30 days' net from the date of the invoice.

This is 30 days' net. Do you know from your experience that the government pays within 30 days after the rendition of invoicing to the government?

A On our current contracts that we have in my company we get paid every 14 days.

Q It is a fact that you saw the prime contract except for the deletion of the amount of money that American Marc was to be paid?

A That is right.

Q Would you look in there to see when the government was to pay American Marc?

A I can't remember. We reviewed the prime contract, but I can't remember what it said.

Q Isn't it a fact, sir, that as of May 12, 1971, on the occasion of Plaintiff's Exhibit 3 being acknowledged by you, there is no reference in here about any special

account; isn't that so?

THE COURT: I can take judicial notice of that.

A This is true, with the exception that there was a modification to include that in this contract, in a later modification.

Q Was that Modification No. 9?

A I can't remember the number.

Q Let me show it to you.

MR. FELDSHUH: I am referring, your Honor, to Plaintiff's Exhibit 4 in evidence.

Before I ask you that, could you tell me, sir, when for the first time was a delivery made under this sub-contract ?

A To the best of my recollection, it was the latter part of November.

Q 1971?

A 1971.

Q Sir, I show you Exhibit 4 in evidence, and it is a fact that this exhibit contains a series of modifications; is that correct, sir? Just take a look.

A That is right.

Q You have identified it as such on your direct examination?

A Right.

Q Do you recall that?

Now, looking down at the bottom of these modifications do you note a signature?

A Yes.

Q Do you recognize the signature?

A I do not myself, but it says, "The purchasing agent."

Q And the purchasing agent is someone of American Marc?

A Yes.

Q Now, Modification No. 1 is signed; isn't that true?

A Right.

Q And No. 2, 3 and 4?

A Yes.

Q No. 5?

A Right.

Q No. 6?

A Right.

Q No. 7?

A Right.

Q No. 8?

A Right.

Now we come to No. 9. No. 9 is not signed; is

that correct?

A This is a copy and not the original.

Q Where is the original?

A I have no idea.

Q Doesn't the original of a purchase order go to Teledyne; isn't that the fact?

A This says this is the acknowledgment copy and it is not the vendor's copy.

Q I just asked you one question. You understand that these papers were produced from the Teledyne files; is that correct?

A Yes.

Q Now, I ask you, sir, isn't it true that the original of Modification No. 9 would be in the Teledyne files in the usual and regular course of business?

A I would assume so.

Q Now, sir, this is the one modification to which you were referring as to the special account; is that right?

A That is right.

Q And it bears the date of October 11, 1971; that is correct, isn't it, sir?

A Right.

Q Now, I ask you, sir, to look at this exhibit

and tell his Honor whether there are any words in it that say that Teledyne is to be paid first.

THE COURT: Don't ask the witness that. Let me look at it.

MR. FELDSHUH: May I call to your attention that I believe there is nothing in there to that effect.

THE COURT: Nothing in there about payment of any time, first,last or -- wait a minute. I see something on the next page. I said there is nothing in there, but I will say that if I read this I would assume that is what it meant.

MR. FELDSHUH: But the point of that, your Honor, is to show that there was no significance.

THE COURT: I see, but that is not what you asked him. You asked him about the first. I am reading it and I would assume that it meant they get paid first.

MR. FELDSHUH: I wanted to call your Honor's attention to the other ones which were signed off by the American Marc representative. This one was not.

THE COURT: If you are talking about no signature, don't talk about first.

MR. FELDSHUH: No, the areas are no signature and also no reference to first.

THE COURT: I understand the no signature point.

On the "first" point, if I read that, that is what it means to me: they were getting paid first. The word "first" as I read that, to me it means that they will get paid first.

MR. MITCHELL: Perhaps I can help you with something, Mr. Feldshuh. In our files we have a Xerox copy of a signed Modificatic No. 9.

MR. FELDSHUH: I don't know where it is. I am only taking what you have produced yesterday, that is all I can tell you. If you had a signed Xerox No. 9, I wish you had made it available so I wouldn't have gone through all of this.

THE COURT: If you wanted to point out there was no signature, why didn't you point it out without taking him through 20 minutes of preliminary?

MR. FELDSHUH: Your Honor said you interpret this purchase order as meaning payment first. If your Honor were correct in that interpretation, the fact that there was no signature on that --

THE COURT: Why waste 20 minutes leading up to the fact that there is no signature? Why don't you say there is no signature on this and then go on to your next question. What difference does it make that all the others were signed? You are making the point that there

is no signature. That point could have been made in one minute or one-half minute. Why waste 20 minutes on the subject?

MR. FELDSHUH: I'm doing that, your Honor, to show, if it please the Court, the practice of signing these things.

THE COURT: You could have done it by saying: "I call your attention to the fact that all these are signed except the last one." That would have finished it. You didn't have to go: 1, 2, 3, 4, 5, 6, 7, 8, 9. You've been watching too much Television.

MR. FELDSHUH: Your Honor, I will try to mend my ways and not watch Television any more than I have heretofore, which is pretty much zero. But I'm sorry if your Honor disagrees with the method.

THE COURT: It is very annoying to sit here for ten minutes and finally come up with an obvious thing that could have been said at the beginning: There is no signature on this document. That is either significant or it is not significant. It doesn't become any more significant by building up to the thing for ten minutes.

MR. FELDSHUH: Very well, your Honor, I will do the best I can. That is what I am trying to do.

THE COURT: Okay,I'm sure you are.

BY MR. FELDSHUH:

Q And your discussion with Mr. Leonard and upon the submission of Teledyne's invoice for units shipped to the government,what was American Marc to do?

A I can't answer directly to that question because after the deal was negotiated the responsibility for the administration of the contract was turned over to Contract Administration and Finance and Mr. Coleman.

Q But in your experience you do know that in order to get paid from the government you've got to requisition for payment, do you not, or invoice the government?

A What happens on all normal government contracts there is a DD 250 that is signed by the government accepting the product and that is what is used for the contractor to receive payment along with invoice.

Q Before the DD 250 is issued by the government, does the government inspect the article?

A Yes, they do.

Q Do you know from what happened with regard to this subcontract what the practice was from the point of view of calling for an inspection?

A There was, in the beginning of the contract,

as best my memory recollects, there was a government inspector that was called from another town to come there.

Q To come where, to Walterboro?

A Yes, to Walterboro. Then right after the contract was started there was a resident inspector stationed at Walterboro.

Q And after a unit was ready for shipment, he would then cause the inspection to be made; is that the way it would work?

A When the unit was accepted at final inspection and ready for shipment.

Q And that would be done at Walterboro?

A It would be done at Walterboro.

Q After the first few days or after some time?

A Yes.

THE COURT: Did he inspect every new unit?

THE WITNESS: Yes, sir.

THE COURT: Not just the first run?

THE WITNESS: He had to sign off the DD 250 for every unit or every lot. There could be 50 on a lot that he could sign.

Q When he had completed his inspection, then I take it the unit would be shipped?

A Not necessarily.

Q Let it not be shipped, then. When would you invoice?

A The invoice would be cut at the time that the DD 250 was signed and, as I remember -- this is the best of my recollection --

Q Who would know more adequately than you - Mr. Coleman?

A Mr. Coleman would.

Q Because I don't want to waste your time.

MR. FELDSHUH: Then I will ask Mr. Coleman about that,your Honor.

Q At any rate, papers had to be sent to American Marc ---

A That is right.

Q -- in California, and then American Marc would have to turn around and send some kind of paper to the government or to the disbursing agent, whoever is going to pay the money?

A I think that is the way it worked. Mr. Coleman can tell you exactly.

Q And you are not sure whether this would take 30 days or 10 days or 14 days or any number of days?

A Well,I can't guarantee you, but I'm sure it didn't take only a matter of a few days.

Q To get the papers to Los Angeles; right?

A Right.

Q And then send it on and get paid from the government?

A That is right. My best estimate is that it would only take a matter of a few days.

Q And you have had that experience?

A Yes,sir.

THE COURT: You say that is different than trying to get books for the library in the courthouse.

THE WITNESS: I have to say, sir,the government pays very faat on government contracts, very fast.

Q Mr. Rouse, you testified that you saw Mr. Anton for the first time on May 12, 1971. Do you remember your testimony, sir?

A That is right.

Q If I recall your testimony, it was about noontime that you did see him?

A Approximately around 12 o'clock.

Q Did you see him at the office of Mr. Leonard in Los Angeles?

A As I testified, we went from the International Hotel to American Marc.

Q When you say "we," do you include Mr. Anton?

A Mr. Leonard, Mr. Coleman and myself.

THE COURT: That is where you met Mr. Anton?

THE WITNESS: No, Mr. Leonard brought Mr. Anton to the International Hotel in his car and we met him at the door and we went to the American Marc facility.

THE COURT: He was never in the hotel, you met him at the door?

THE WITNESS: That is right.

Q During the course of that journey from the hotel to the office you didn't discuss anything of substance about this contract; is that right?

A It is only a matter of a few blocks.

Q When you arrived at Mr. Leonard's office, did you sit down with Mr. Anton and Mr. Leonard?

A And Mr. Coleman, yes.

Q And Mr. Coleman. The four of you sat together?

A Yes.

Q Would you tell his Honor what was the course of the discussion and who said what?

A Well, I can tell you generally what we did.

THE COURT: Was it around a table or how did you sit?

THE WITNESS: We were sitting in the office.

One of them was behind the desk and I think the rest of us were sitting around the desk.

THE COURT: Who was behind the desk?

THE WITNESS: I can't remember whether it was Mr. Leonard or -- I think it was Mr. Leonard.

THE COURT: Was it his office?

THE WITNESS: Yes, I think it was his office.

THE COURT: To the best of your recollection he was sitting behind the desk?

THE WITNESS: Yes.

THE COURT: The three of you were in front of him?

THE WITNESS: And around the desk.

THE COURT: The way you would sit in somebody's office when he is behind the desk, to the best of your recollection?

THE WITNESS: Yes.

BY MR. FELDSHUH:

Q At that time had you seen Plaintiff's Exhibit 3 in evidence, the purchase order, and M1257, Exhibit 3 in evidence?

A Mr. Leonard gave us the purchase order at that time.

Q When he gave you the purchase order did he give

you all the sheets that appear on Exhibit 3 here?

A He gave us everything. Of course, there was no modifications at the time, but he gave us -- this is what he gave us.

THE COURT: He gave you what you are holding in your hand?

THE WITNESS: Yes, plus --

THE COURT: What you now hold in your hand also includes a sheet which is separately attached and is different from all the other sheets?

THE WITNESS: That is right.

Q With regard to this purchase order, was there a discussion then with Mr. Anton or in the presence of Mr. Anton as to what this contained?

A In general what happened, I very hurriedly read it. Mr. Coleman read it. And then Mr. Leonard was telling Mr. Anton, roughly, about the price of some of these things.

Q Was there a discussion about the last page which has the word "attachment"?

A These are changes that we had requested in the purchase order and we read those to be sure they were in there.

THE COURT: Was there any discussion, he wants

to know?

THE WITNESS: The discussion was from the standpoint between us and Leonard and was that you have included these per our request, something similar to that.

Q Was there reference to these changes in your Daily-Timer, these requested changes?

A We discussed the purchase order as one item. The next thing we discussed was, in general, the agreement that we were going to sign at the lawyer's office, the general -- the purchase price of the inventory, purchase price of the tooling and the unit price and how we were going to split off the material, so there was a general discussion about that. The third thing that we discussed was the handwritten notes that I had, that page and a half. I don't know what exhibit it was now.

Q Yes. I think we know what you are talking about.

MR. VARY: Exhibit 2.

A At which time everybody agreed that in general this is what we had agreed to and Mr. Leonard asked for a copy of it.

THE COURT: It is Exhibit 2, the handwritten notes; is that right?

MR. FELDSHUH: Yes.

MR. VARY: That is correct.

THE COURT: All right, we have it identified.

Q Now, you were referring to Exhibit 2 when you said you discussed the handwritten notes.

A We would discuss this also. We spent some time with Mr. Anton discussing with him our concern about getting payment.

THE COURT: About what?

THE WITNESS: About getting payment. And we talked to him about setting up the new special bank account and that we wanted to be sure that they understood that the money that would be coming from the government, the second year procurement, belonged to Continental Motors and we should be paid from that account, and also that if there was any residual money, then that would revert back to Eon. We wanted to be sure that Mr. Anton knew this, being the president of Eon.

Q What did Mr. Anton say, if anything?

A Mr. Anton agreed, and he so instructed Mr. Leonard to go ahead and set up a special bank account.

Q Do you know --

MR. FELDSHUH: May I take that, your Honor?

THE COURT: Yes.

Q Do you know where the attachment to the purchase order was typed?

A This was typed, I believe, in Mr. Leonard's office.

Q I see.

At any point in time did you ask Mr. Leonard in words or substance to include in that attachment a reference to the special bank account?

A I did not, sir, because the agreement was that I would write him a letter confirming our agreement on the other subjects the following day.

Q When you say the other subjects, what subjects, other than --

A Well, as in here and as denoted in my letter of May the 13th.

Q Letter of May 13?

A Right.

Q Was there any reason why you didn't include

that in the purchase order?

A Yes, there was a reason, because at that time we had a gentleman's agreement, we trusted them, we believed in what they told us; and they told us that they would do it and I explained that we would send a letter agreement confirming that.

Q At the time the purchase order was discussed, was there revealed to you the man in St. Louis who was handling this particular contract?

A You mean the contracting officer?

Q Yes.

A There might have been, but I can't remember the man's name.

Q Do you remember, does the name Charles Unser refresh your recollection?

A It does, but I am not sure that I remember his name from that meeting, though.

Q Later on you did learn, did you not, if it wasn't at that meeting it was some other time, you learned that Mr. Unser was the officer in St. Louis in charge of this particular contract?

A I would have to say yes.

THE COURT: You say Unser was an officer. Was he an officer of hte United States Army?

MR. FELDSHUH: Of the United States Government.

Q What was his title, if you remember?

A I can't remember exactly.

Q But he was an employee of the mobility command in St. Louis, as far as you know?

A As far as I know, yes.

Q Now, sir, Teledyne had an employee whose function was to be in communication with the government with regard to government procurement of products, etc., wasn't there such a person?

A This is right.

Q And his name was Mr. Bob Turley, if you remember?

A Turley? No.

Q T-u-r-l-e-y?

A No.

Q In May of 1971 who was the gentleman?

A Are you speaking about Continental Motors at this time, Teledyne Continental Motors? Because this is the company that held the subcontract. We had several people in our contract administration, people who were -- in that department that had that responsibility.

Q Was there anyone -- did you ever hear of the name of Mr. Turley?

A Mr. Turley was in our corporate office.

Q Is that the parent company?

A Parent company, yes.

Q What was his title?

A I really can't tell you what his job is.

Q Were you ever in contact with him at any time?

A Not myself, no.

Q With regard to your contract administration people in Continental Motors at that time, did you ask any of them to contact the officer, purchasing officer in St. Louis with regard to this contract?

A The anwwer is no because when I returned, I returned all the documentation over to the proper people within our company, and then they went ahead and did what they should do. In otherwords, if they contacted them they contacted them and so on and so forth, but I didn't instruct anybody to contact them.

Q Wouldn't these contacting people report to you with regard to this particular contract and its progress?

A The answer is no.

THE COURT: Mr. Rouse, just a suggestion, if

the answer is no, stop there.

A Okay.

Q How long did this conference take in Mr. Leonard's office on May 12?

A I would say approximately one and a half hours.

Q And then did you go to lunch or what did you do, if anything?

A Mr. Leonard, Mr. Anton and I drove to downtown Los Angeles, and as I remember, we had a hamburger and then we went to the lawyer's office.

Q You testified that Mr. Coleman left at about that time, after this conference.

A That is right.

Q And he did not go tothe lawyer's office with you?

A That's right.

THE COURT: Did Mr. Anton go to the lawyer's office with you?

THE WITNESS: Yes, sir, he did.

Q Was Mr. Walper in the room at all?

A Mr. Walper was not in the meeting.

Q Do you know if Mr. Walper was seen on the premises by you?

A Mr. Walper was on the premises and he took Mr. Coleman back to the airport.

Q Did you ask Mr. Walper to take him back?

THE COURT: Take who back?

Q Take Mr. Coleman back to the airport.

A I can't remember who asked Mr. Walper to take Mr. Coleman back to the airport.

Q But it is the fact that Mr. Walper did not participate in this conference at all where Mr. Anton was present?

A As far as I can remember, no.

Q During the course of the conference was there any discussion about Mr. Walper's position as a finder?

A During the conference, we did review with Mr. Anton how we come to know about the subcontract.

Q What did you say to him?

A And as I remember, I told him roughly what had happened, that we'd be contacted by Mr. Walper per Mr. Leonard's request, and he had requested that we come out, which we'd done; and then we had negotiated a contract and so it was kind of just a summary, you might say, of what had happened.

Q Did you state or did you hear anyone tell

Mr. Anton in words or substance that the price of $360 was fixed provided that Walper was paid?

A Yes, we told Mr. Anton that, that we had agreed on a pirce of $360 provided that Mr. Walper was paid a $5 commission.

Q By Teledyne?

A By Teledyne, right.

Q You said that to Mr. Anton?

A That's right.

Q Did Mr. Anton make any comment about that at all?

A Mr. Anton, as I can remember, was very pleased with the total arrangement. He was very pleased that our company was acceptable to take on the contract, he seemed to be very pleased with the price, and really what he wanted was the contract to be finished and you know in a respectable manner.

Q Mr. Anton didn't say anything about his concern that Mr. Walper get paid, did he?

A None whatsoever.

Q His comment with regard to Mr. Walper, was that just a passing comment?

THE COURT: Which comment?

Q The ocmment that's $360 provided Walper gets

paid?

A No, it was stated just as that and I wouldn't say it was a passing comment.

Q I see, and Mr. Anton didn't react to that at all?

A None, no.

Q Did you make any phone calls during the conference to any other employee of Teledyne, now referring to the conference when Mr. Anton was present?

A I did not.

Q Did you tell anyone at Teledyne that you were going down to the lawyers who represent American Marc with regard to signing an agreement

A You mean that day?

Q That day or any day.

A I can't recall whether I talked to anyone or not. I probably might have talked to someone in my office like my secretary or someone like that.

Q I'm sorry, excuse me.

A We did not know we were going to go to the lawyer's office until the afternoon of the 11th.

Q That was the occasion, wasn't it, the afternoon of the 11th, when you spoke to a Mr. Kotts?

A No, it was the -- I talked to Mr. Kotts on

the evening of May 10 the first time.

THE COURT: Which one was Mr. Kotts?

MR. FELDSHUH: Mr. Kotts was the in-house counsel, your Honor.

A And then I alsotalked to him the following morning, the morning of the 11th, when we drew up the agreement that was eventually signed.

Q When you say when you drew up the agreement, are you referring to those drafts that you testified to yesterday?

A That were typed, yes, that were rough.

Q The first draft and the second draft. Did you read those drafts to Mr. Kotts?

A You mean after we finished?

Q Either after or --

THE COURT: He dictated the drafts he said.

A Mr. Kotts dictated the drafts to me and I took them down in longhand.

Q So that was Mr. Kotts' product?

A That's right.

Q That draft?

A That's right.

Q I see.

After you got the first draft back, you then

had a second draft prepared?

A Because there were so many typing errors in the first draft.

Q So it was a typo situation, typing errors?

A Yes, terrible.

Q Weren't changing the substance of what Mr. Kotts said?

A That's right.

THE COURT: Do I understand that the final contract is typed by defendants' lawyers was substantially what Mr. Kott had dictated to you?

A Just exactly.

Q In the course of your discussion with Mr. Kotts, didn't you tell Mr. Kotts about the special account?

A Yes, I told him that -- excuse me -- yes, I did tell him I'd talked to Mr. Lewis in the afternoon of the 10th.

Q You told Mr. Kotts that you spoke to Mr. Lewis, I see.

A I told him that the D&B, the results of the D&B.

Q You told this to Mr. Kotts?

A That's right.

Q And you also told him about the special account?

A That's right.

Q Did you say to Mr. Kotts that with regard to the special account that will be a gentleman's agreement?

A No, I told Mr. Kotts this would be a letter agreement which we would send to sign later. I didnot want to interject that at that time.

Q You said that to Mr. Kotts?

A That's right.

THE COURT: Why didn't you want to interject it at thattime?

MR. MITCHELL: Your Honor, excuse me, at this point, we have been getting very close to what I consider an attorney-client privilege problem. Mr. Kotts is the in-house counsel for Teledyne-Continental Motors. Mr. Rouse did call him with reference to a matter in the course of business of Teledyne. I have not objected to questions as to -- preliminary questions of what Mr. Rouse said to him.

THE COURT: This of course is your client's privilege and you have a right to assert it, but I have a right to draw inferences from the fact that you assert it.

MR. MITCHELL: Well, that may be, your Honor,

but I would still --

THE COURT: You want to assert it?

MR. MITCHELL: I will make the objection.

THE COURT: All right.

MR. FELDSHUH: You are sustaining the objection I take it?

THE COURT: Yes, I sustain the objection. I draw inferences from the fact that he doesn't want to get on it. My inference is thatit would be helpful to your case if you were allowed to explore it.

MR. FELDSHUH: I understand Mr. Kotts will be a witness.

THE COURT: He will have the same problem.

MR. FELDSHUH: I am sure he will. I will have the same problem.

MR. MITCHELL: Your Honor, I take it I will have an opportunity at some later date to make an appropriate response to your Honor's comment as to the inference that can be drawn from the invocation of a privilege like that, in my opinion, your Honor, cannot be utilized.

THE COURT: I think you are quite wrong on that.

MR. FELDSHUH: So do I.

MR. MITCHELL: I would like an opportunity, your Honor.

THE COURT: You certainly will, but I don't give you much hope of success of proving it because it's your privilege, it's not a Fifth Amendment privilege, it's a privilege of the Court of Appeals, and if the Court of Appeals assets it then the only inference I can draw is that there is some purpose in asserting it.

I assume you don't assert it to prove that you went to law school and know about it. I assume you have a purpose for asserting privilege. I assume you don't want me to hear what was said. The only assumption I can draw is that it would be harmful to you.

MR. MITCHELL: I think, your Honor, that would vitiate the privilege.

THE COURT: It doesn't vitiate it at all. The lawyer's privilege hasn't got all this Fifth Amendment thing on it. The lawyer's privilege is a very simple privilege, and if it is recognized that the client doesn't waive it, I am a human being, and if you tell me you don't want me to look in the book, I have got to assume that looking in the book would be harmful to you. Otherwise you'd want me to look in the book.

MR. MITCHELL: Well, you Honor, may I do this then: I would like to have an objection, I would like to -- I will allow Mr. Feldshuh to go into this, but I would like to preserve my position so that I may later move to strike --

THE COURT: That is all right.

MR. MITCHELL: -- on that ground. I just do not want to waive the invocation of the privilege at this point.

THE COURT: All right, you may answer without prejudice to a motion to strike.

You can go ahead and ask about that.

MR. FELDSHUH: Your Honor, of course, on the motion to strike later on --

THE COURT: You will argue that when it comes.

MR. FELDSHUH: When we come to it. I just want your Honor to know I have a different view on that.

THE COURT: I assume all lawyers have different views.

MR. FELDSHUH: Quite right, sir.

Q Mr. Rouse, after you spoke with Mr. Kotts, as you have testified, you stated that you took down and wrote on this piece of paper which one constituted

the first draft that you identified; is that right?

A That's right.

Q And as I understood your testimony, what you were putting down on that paper is what you heard from Mr. Kotts, is that right?

A That's right.

THE COURT: Naturally.

Q Now, sir, with respect to the second draft, the corrected one, the typos being eliminated, was that done in several copies?

A I can't remember whether it was or not. I just can't remember.

Q Do you recall your testimony that when the second draft was finished, you gave a copy of that draft or the draft to Mr. Leonard? Do you remember that?

A That's right.

Q This was after another public stenographer had done that second draft?

A That's right.

Q You knew, did you not, that Mr. Leonard was going to take that draft to American Marc's lawyers?

A That's right.

Q Did you report that fact to Mr. Kotts?

A I can't remember.

THE COURT: Let me interrupt. Why did you not want to bring up at this point the question of the special account? You said you didn't want to bring it up. Why not?

THE WITNESS: You mean -- I don't understand your question.

THE COURT: You said in answer to Mr. Feldshuh's question that -- he pointed out that there was nothing in this draft about the special account.

THE WITNESS: See, really, sir --

THE COURT: You said you didn't want to bring it up at this time.

THE WITNESS: Really what I called Mr. Kotts about was the basic agreement that we had that we wanted to sign and the general points in that covering the sale, the inventory and the tooling and stuff like that; and that was an agreement all by itself.

THE COURT: Why didn't you want to put in this part about the special account?

THE WITNESS: I guess there was no special reason other than what I wanted was the one agreement right hten; because again we felt that we had this worked out on a special account, and that it would be covered in the following letter which there were several items

that I covered in that May 13 letter that were not in the agreement itself.

MR. MITCHELL: Your Honor, I think there is a little bit of lack of clarity here. The agreement that I understand Mr. Feldshuh is questioning on which went through several drafts is I believe the agreement that is now Plaintiff's Exhibit 5 in evidence, which relates only to the inventory.

THE WITNESS: That's right.

MR. MITCHELL: It's not the agreement which was covered in the later letter. It's not the purchase order. It's the inventory sale.

THE COURT: That's right.

MR. FELDSHUH: May I point out too, your Honor, that that exhibit right in its recitals and preambles that agreement makes direct reference to the purchase order, by direct reference.

THE COURT: There wouldn't be any purpose in buying inventory unless there was going to be a purchase order.

THE WITNESS: That's right.

MR. FELDSHUH: Yes, absolutely right, sir.

Q There came a point in time, did there not, Mr. Rouse, when on or about May 25, 1971, you received a

response from Mr. Leonard with regard to the bank account, and his agreement as to the items set forth in your letter of May 13. Do you recall that occasion?

A May I see it, please?

Q Just one second I will getit for you.

THE COURT: May 25?

MR. FELDSHUH: Yes, your Honor.

THE COURT: May 25 was his signature on this agreement, on this letter.

MR. FELDSHUH: This is Exhibit 7 in evidence, sir. It's an American Marc.

THE COURT: Dated what?

MR. FELDSHUH: May 25, 1971.

THE COURT: This is dated May 25, 1971 also?

MR. FELDSHUH: Yes.

As your Honor will note, at the signoff at the bottom there where the signoff is, there is a reference to per separate letter attached or something of that sort. Can your Honor read that?

THE COURT: Letter report May 21 attached.

MR. FELDSHUH: Yes, May 21 attached. I am now referring to the May 21 letter, but Mr. Rouse received this letter dated May 25 to which the May 21 letter was attached.

THE COURT: Yes. Do we have the May 21 letter?

MR. FELDSHUH: I am getting the May 21 letter out now, your Honor.

MR. MITCHELL: If your Honor please, I am a little bit ocnfused. What exhibit number is being referred to now?

THE COURT: Exhibit No. 6 has at the bottom "Acknowledged and accepted per my letter report May 25 attached."

MR. MITCHELL: That is the letter dated May 13,your Honor.

THE COURT: That is this witness' letter dated May 13.

MR. MITCHELL: I see.

THE COURT: It was returned with an acknolwedgement dated 5/25 "per my letter report May 25."

MR. MITCHELL: I read that May 25.

THE COURT: I read it May 25 too, although it's not clear.

MR. FELDSHUH: That's correct, it's May 25, your Honor, because I now have the exhibit here.

Q I show you, Mr. Rouse, Exhibit 8. As you testified on your direct examination, this is the

letter which is referred to in Exhibit 6. Is that right? Is that the letter that you received a copy of that letter which is referred to?

A Yes.

MR. FELDSHUH: Your Honor, I just ask your Honot to note the contents of this letter.

MR. MITCHELL: Mr. Feldshuh, is this Exhibit 8 you are referring to now?

MR. FELDSHUH: 8, yes.

THE COURT: All right, this is the letter that was in Judge Bauman's footnote?

MR. FELDSHUH: I believe it was one of those that was in the file very definitely.

THE COURT: It was put out in Judge Bauman's opinion?

MR. FELDSHUH: Yes, sir.

THE COURT: All right, I have read it now.

Any time you get a time you want to stop we can break for an hour at any time you want to.

MR. FELDSHUH: This will be fine now.

THE COURT: You want to stop now?

MR. FELDSHUN: Yes.

THE COURT: See you allat ten minutes to two.

(Luncheon recess)

AFTERNOON SESSION
1:50 p.m.

H A R O L D W A Y N E R O U S E resumed.

CROSS-EXAMINATION

BY MR. FELDSHUH:

Q Mr. Rouse, with regard to the purchase order, when were you supposed to deliver those 4,350 units?

A I can't remember the exact delivery schedule.

Q Were the deliveries to be completed by June of 1972? Or thereabouts?

A Like I said, I can't remember the exact delivery dates. I think it was sometime in that period probably.

Q I'm sorry?

A Sometime in that period.

Q Sometime in that period?

A Yes.

Q Sir, as the units were being shipped out and the invoices were coming into American Marc, Teledyne expected American Marc to bill the government, is that right?

A That's right.

Q And upon receiving a payment from the government

you testified, did you not, that the invoices of Teledyne were to be paid and if there were any, and I think you used the word residuals, do you remember that word?

A Yes.

Q That would belong to American Marc, is that right?

A That's right.

Q With regard to those residuals, you could expect American Marc, and it was your understanding at that time, that the residuals could be paid or utilized by American Marc for any purpose, is that right? Isn't that right?

A Yes, with one proviso.

Q We are talking about the understanding you had in May of 1971. What was the proviso, sir?

A There would be -- if they were selling the units for more than what they were paying us for them.

Q Yes. Well, it was your impression, was it not, that they were selling the units to the government for more than what you were paying -- than what Teledyne was paying?

A We had no reason to actually know, but we suspected that.

THE COURT: You pretty much have had a notion of that.

THE WITNESS: Right.

Q So with respect to the contract, the sub-contract being performed and it was going on, you did expect that there would be residuals, right?

A Yes.

Q Please say yes, if you mean it. Don't shake your head.

With respect to those residuals, American Marc could use those residuals as it chose, right?

A Yes.

Q So that when you used the word first in your notes, you expected that there would be others who would be paid out of the monies received from the government, is that right?

A Answer with wualification.

Q Could you just answer yes or no at this stage and I will ask you for your qualification.

Isn't that right, sir?

A Yes.

Q So that upon the occasion of, and with regard to this special account to which you referred in the Bank of America, you knew and it was your understanding

that funds in that account could be used for other purposes than paying Teledyne, is that right? Isn't that the fact?

A Only the residual amount.

Q Okay. So thatwhen you used the word "first" in your notes and in your daily timer, you knew that that special account would be used for purposes other than paying Teledyne? Isn't that right, yes or no?

A Provided that if they received more money than what they were selling them to us.

Q And you expected that they would receive more money?

THE COURT: I think you established that.

MR. FELDSHUH: Okay. Thank you.

Q Mr. Rouse, you testified this morning, and correct me if I am mistaken, I believe this was your testimony that at the conference when Mr. Anton came on May 12, 1971, and in Mr. Leonard's office, you took out your handwritten notes and those handwritten notes were either given to Mr. Anton or read to him but he became aware of those handwritten notes, did he not?

A Which notes are you referring to?

Q I am now referring to Exhibit 2 in evidence.

A That is right. We reviewed themand as I

said before, Mr. Leonard asked for a copy and a copy was made.

Q And Mr. Anton --

A He was present.

Q You had this piece of paper or the original of this piece of paper?

A Right.

Q In your hand and you were reading from it, is that right?

A Reading or either ad libbing from it.

Q But Mr. Anton was able to see this?

A That's right.

THE COURT: When you had -- how was the copy made? Who made the copy?

THE WITNESS: I can't remember whether he gave it to his secretary for her to run a copy or -- he had a copy made because the other copy was given back to us.

THE COURT: Mr. Leonard had a copy made?

THE WITNESS: That's right. Right there at the facility.

Q And there was no question, Mr. Rouse, that Mr. Anton knew that you were discussing your notes, handwritten notes as contained in Exhibit 2?

A That's right.

Q Mr. Rouse, do you remember appearing at the offices of Feldshuh & Frank on September 20, 1972, in connection with a deposition that was then being taken in this litigation and do you recall upon that date that I was asking you questions and you were giving me answers?

A That's right.

THE COURT: I take it you don't remember the date but you accept that date?

THE WITNESS: That's right.

Q Upon that occasion?

A Yes.

MR. FELDSHUH: Your Honor, for your Honor's convenience here is the original deposition of Mr. Rouse.

THE COURT: As a personal favor to me, don't ask him does he remember this question and does he remember that answer because if he is lying through his teeth, he will say yes and he obviously doesn't. So just call his attention to testimony he gave and ask him to explain it if you want him to.

MR. FELDSHUH: I will just do that. I won't do any preambles, your Honor.

THE COURT: All lawyers get up and say, 30 years ago, do you remember this question, do you remember

this answer and the witness in a loud resounding voice says yes. Why the U. S. Attorney sits back and doesn't prosecute for perjury, Iwill never know.

MR. FELDSHUH: Okay, your Honor, thank you. I have to make that submission to another judge when I am before him too, your Honor.

Your Honor, would you kindly direct your attention to page 31, please.

THE COURT: What line?

MR. FELDSHUH: Page 31, your Honor, starting at line 9, pleaes.

THE COURT: All right.

Q The question on that occasion was as follows:

"Q When you say 'everything was reviewed,' are you including items 1 through 5 as the same appears on Defendants' Exhibit C for identification?"

MR. FELDSHUH: And may I , for the record, your Honor, Exhibit C was the daily timer.

THE COURT: I see.

Q "A Yes, sir, with the exception at that time they were in general handwritten notes, they were not typed."

Sir, with regard to the general handwritten notes, those are the handwritten notes to which you have

just referred, is that right, Exhibit 2?

A That's right.

Q "Q Whose handwritten notes were they in?

"A They were mine.

"Q Did you furnish any copy of those notes to Mr. Anton at thattime?

"A No, sir.

"Q Or to Mr. Leonard?

"A I can't remember whether we left the copy of the notes or not.

"Q But you do have a definite recollection that you didn't furnish it to Mr. Anton, is that right, sir?

"A I am fairly positive we didn't."

MR. MITCHELL: Your Honor, at this point I would like to have a clarifying point. Mr. Feldshuh has said Defendants' Exhibit C on thatdeposition was the daily timer but it appears not to be the day timer but a photostat of a letter on Teledyne Continental Motors stationery dated May 13, 1971.

MR. FELDSHUH: All right, I stand corrected. I thought 1 through 5 meant the day timer.

MR. MITCHELL: No, it's 1 through 5 on that letter.

MR. VARY: Items 1 through 5 of the letter.

THE COURT: The letter being --

MR. VARY: May 13, your Honor.

THE COURT: Being Exhibit 6?

MR. MITCHELL: Exhibit 6, your Honor, that's correct.

Q Now, Mr. Rouse --

THE COURT: In other words, the next question on page 32 makes it clear the handwritten notes you were referring to were the day timer notes, not Exhibit 2.

MR. FELDSHUH: I think, your Honor, with regard to those, this is general handwritten notes and I think this witness has now testified that the general handwritten notes were the ones referred to and is Exhibit 2 in evidence.

THE COURT: If the witness is as easily confused as I am by the term handwritten notes, you interchangeably used to refer to the day timer notes and to Exhibit 2 --

MR. FELDSHUH: When your Honor connects up, as I have been corrected by counsel, when your Honor connects up the handwritten notes, Exhibit 2, with the leteer written on May 13, which is Exhibit 6, your Honor will see the direct reference.

You will remember, your Honor, in the daily timer there was no reference in any subsequent letter or in the handwritten notes about enough money left in the contract and so on.

MR. MITCHELL: Your Honor, may I state --

THE COURT: Let him go ahead --

MR. MITCHELL: Your Honor, on page 32, the first question --

THE COURT: I have already called his attention to that.

MR. MITCHELL: That is not Exhibit 2 in evidence.

THE COURT: The daily timer is Exhibit 2.

MR. VARY: No, it's Exhibit 1, your Honor.

THE COURT: This is Exhibit 1?

MR. VARY: The day timer is Exhibit 1.

THE COURT: Exhibit 2 is the handwritten memorandum?

MR. FELDSHUH: The handwritten memorandum.

THE COURT: Maybe it would clarify things if you call Exhibit 2 the memorandum and Exhibit the notes. Maybe that will clarify things.

MR. FELDSHUH: I have been talking about the

daily timer all the time and there is only one daily timer.

THE COURT: You talk about handwritten notes. To me that describes the daily timer. It doen't describe this handwritten memorandum.

MR. FELDSHUH: At any rate, as long as your Honor has that and I want to avoid the confusion too, may I just repeat just once more.

Q Sir, reading page 31, and reading at line 9, your question and answer, and where you say "general handwritten notes," I asked you a moment ago the general handwritten notes refers to Exhibit 2 in evidence, is that right?

A Really what I reviewed at that meeting was two things. One, the comments that I had in the day timer because there were so many notes in there that's not in this and also what was in this. So there are two things that was really reviewed with him.

Q But basically -- again I ask you the question, the reference on line 13, general handwritten notes, what you meant by that is Exhibit 2 in evidence?

A What I'm telling you, though, it was this plus so many of the times on the day timer.

Q I understand. It's this plus?

A That's right.

Q So it's not something different from this except the plus part?

A It was a combination of the two.

Q At any rate, it included Defendants' Exhibit 2?

A Yes.

THE COURT: You say here "I am fairly positive I did not furnish it to Mr. Anton."

As I get your testimony now you seem to think you did furnish it to Mr. Anton. What's the explanation?

THE WITNESS: Your Honor, I think I stated earlier in testimony that Mr. Leonard asked for a copy of this and this is exactly whatwas given to Mr. Leonard after we had the general discussion with Mr. Anton. And I don't think there is any inconsistency here. I never did say I gave a copy of this to Mr. Anton.

THE COURT: I remember that you did.

THE WITNESS: Mr. Leonard asked for it and I gave the copy -- Mr. Leonard had the copymade and they kept it there. Who wound up with it I don't know.

MR. MITCHELL: Your Honor, may I also have another clarification. As you recall, the witness testified he did not find a copy of these notes,

Exhibit 2, in his own file. We, through the process of discovery, obtained them from the files of Eon.

THE COURT: I'm aware of that.

MR. MITCHELL: Which in my recollection the witness was not in possession of at the time ofhis deposition.

MR. FELDSHUH: Your Honor, I'll proceed. I am leaving it to your Honor to weigh this situation as your Honor sees fit.

Q Sir, you just testified a moment ago that when you made reference to your talks with Mr. Anton and Mr. Leonard on that occasion, you referred to your notes as contained in your daily timer, Plaintiff's Exhibit 1?

A Some of the notes, yes.

Q Some of the notes and also some of the notes in your exhibit, Plaintiff's Exhibit 2, your handwritten memorandum, right?

A That's right.

Q And you discussed that with Mr. Anton, is that correct, sir?

A Mr. Anton, Mr. Leonard, Mr. Coleman.

MR. FELDSHUH: Will counsel concede that exhibit E on the deposition of Mr. Rouse was also, is now Exhibit 1, the daily timer, is that correct, Mr. Mitchell?

MR. MITCHELL: That's correct. I do not recollect offhand if the entire document, the entire daily timer was offered as an exhibit. I know those pages E1 through E6 were denoted at that deposition.

MR. FELDSHUH: Will your Honor kindly refer to page 39.

THE COURT: Of this deposition?

MR. FELDSHUH: Of the deposition. At line 2, sir.

THE COURT: That's right.

Q "Q Is it the fact, sir, with regard to items 2 and 3 on E5 -- may it please the Court, the entry on May the 11th, 1971.

May I repeat the question, sir, in that context.

"Q Is it the fact, sir, with regard to items 2 and 3 on E5 that that represented talks with Mr. Leonard?

"A That's right.

"Q It is also the fact that they didn't represent talks with Mr. Anton?

"A That's right."

MR. FELDSHUH: Your Honor, with regard to items 2 and 3, they are as follows:

THE COURT: I see them.

MR. FELDSHUH: You see it, all right?

THE COURT: Yes.

MR. FELDSHUH: All right, sir.

THE COURT: Item 2, there is enough money in the contract for 4,350 units --

MR. FELDSHUH: What page are you reading, sir?

THE COURT: I'm reading the items.

MR. FELDSHUH: Yes. Item 2, there is enough money in the contract for 4,350 units to satisfy TCM invoices -- I guess that word is per -- per Leonard.

THE COURT: That means Leonard said it.

The other is inventory blocks to AMC Marc to be sold to the TCM.

And this testimony is that these items reflect discussions with Mr. Leonard and not with Mr. Anton, correct?

THE WITNESS: As far as I could remember, sir, that's right.

MR. FELDSHUH: May I also respectfully, your Honor, on this point, ask your Honor to look at page 38, at line 18.

Q The question there is: "Have you a recollection

with regard to major point No. 1 as the same appears on E5 as to any talk with Mr. Anton as to item No. 1 on that page.

"A No."

THE COURT: Item 1 is --

MR. FELDSHUH: Item 1, sir, is --

THE COURT: EOM Leonard refuses to novate the contract to TCM and wants subcontract.

Q Mr. Rouse, you continued to be in contact with Mr. Leonard after May 12, 1971 with respect to the subcontract, did you not?

A I met with him a couple of times after that.

Q At that time you knew him to be still connected with American Marc, isn't that so?

A Yes.

Q And still the vice president and a director of Eon?

A As far as I knew, right.

Q Sir, did you continue to be in contact with him in the month of November, 1971?

A As I testified, we had a meeting the latter part of October or November in Walterboro.

Q And at that time Mr. Leonard was still vice president of American Marc and a director of Eon, is that

right?

A As far as I knew, yes.

Q When you met with him -- I withdraw that question.

MR. FELDSHUH: Your Honor, Mr. Weinberger, my co-counsel from my firm has dealt at considerable length with these depositions and with your Honor's permission, may I respectfully request that he be permitted to cross-examine Mr. Rouse at this point on this area?

THE COURT: Okay.

MR. FELDSHUH: Thank you, sir.

BY MR. WEINBERGER:

Q Mr. Rouse, do you recall testifying yesterday that on approximately eight to ten occasions you had occasion to ask Mr. Leonard to novate the contract? Is that a fact, sir?

A That's right.

Q Is it not also correct, sir, that you testified that Mr. Leonard gave you some reasons for not wanting to novate the contract, is that a fact, sir?

A That's right.

Q What reasons did he give you, would you repeat them, please, do you recall the reasons given?

MR. MITCHELL: Your Honor, I object to going

over testimony that was given yesterday.

THE COURT: If he doesn't do too much. He wants to narrow. I assume he is leading up to something.

MR. MITCHELL: If he wants to represent what the testimony was, he can get right at it.

THE COURT: He can proceed in this way.

Q Isn't it a fact, Mr. Rouse, that you testified that Mr. Leonard said that one of the reasons was that Eon, the parent company, had government contracts?

A That's right.

Q Didn't you also give as a second reason, as Mr. Leonard had -- had stated to you, he did not want to harm Eon's governmental relationships?

A That's right.

T2 Q Did you also not state that Mr. Leonard gave you an additional reason that their profit position with regard to the prime contract, he didn't want to upset that situation?

A That is right.

Q Did you also not say that another reason given by Mr. Leonard was that they wanted to control production by Teledyne? He gave you all those reasons, did he not?

A He wanted to administer the contract.

THE COURT: I don't remember him saying control. I remember him saying just what he said now.

Q I call your attention, Mr. Rouse, to page 75 of the transcript. Do you have a copy of that?

THE COURT: Do you want to give him a copy?

MR. WEINBERGER: I'm reading, your Honor, from the beginning or I suppose at the bottom of page 74 and the top of page 75. I will begin at line 12 of page 74:

"Q When was that notation placed and made by you?

"A It was made at the time we discussed -- that I discussed it with him, which was the first morning of negotiations."

THE COURT: Where is this?

MR. WEINBERGER: Line 23, page 74, your Honor. That is what I am reading from.

"The first thing I asked for was novation of the contract, which is the simplest form of doing this."

Next page, page 75.

"Q And Mr. Leonard refused?

"A That is right.

"Q Did he state why he didn't want to novate the contract?

"A He didn't specifically state. We had indications, and then the answer goes off, your Honor.

THE COURT: What is your point?

MR. WEINBERGER: The point, your Honor, is that I believe there seems to be an inconsistency between the testimony of the witness at the trial and the testimony in the deposition.

THE COURT: It doesn't seem so to me. He was cut off. He wasn't allowed to say what he was going to say.

MR. MITCHELL: Also, your Honor, I may point out, and this refers to the very first time the subject of novation was brought up, I believe Mr.Weinberger's question related to an entire day of discussion.

MR. WEINBERGER: Page 62, your Honor, line 13,

of Mr. Rouse's deposition.

Q Do you recall this question, Mr. Rouse, at line 13, page 62:

"Q Mr. Rouse, was there any otherperson connected with Eon or American Marc with whom you communicated on an executive level in relation to this contract, the subcontract, other than Mr. Leonard?

"A No one."

MR. MITCHELL: At this point, since Mr.Weinberger has read from a portion of the deposition, I believe that the Court should note that prior to the section that Mr. Weinberger has just read from there is some colloquy which regards the production or documents. Documents were produced for viewing by the defendant's attorneys over the luncheon recess and Ibelieve it is a fair inference from the question that when the term "communicated" was used on line 15, it referred to written communications because that is the context of the discussion of the documents of Mr. Rouse that was reviewed at the last recess.

THE COURT: It certainly can't be intended to repudiate all the testimony you had about Anton before in the same deposition.

MR. WEINBERGER: Pardon me, your Honor?

THE COURT: This one answer certainly can't be construed as the witness's intention to repudiate all the specific testimony he had given about Mr. Anton.

MR. WEINBERGER: That is the very point. The specific testimony given about Mr. Anton is first solicited, for the very first time, at trial.

THE COURT: There is some in here.

MR. WEINBERGER: I respectfully call to your Honor's attention that throughout the entire transcript of the deposition by Mr. Rouse none of this testimony is elicited as to the activities of Mr. Anton. As a matter of fact, your Honor, I would suggest that a fair reading of the deposition would be that Mr. Anton did not participate at all in the negotiations.

THE COURT: I may have misread it. I may have read it against the background of what I have heard, but I thought the deposition showed Mr. Anton as having been at this conference.

MR. WEINBERGER: I respectfully call to your Honor's attention that that is the precise situation here: that your Honor has commented in line with what Mr. Rouse has testified to, but there was an entirely different tenor to the testimony at the deposition. The precise language used by him speaks of a different

situation, and I respectfully submit and submit that the testimony of Mr. Rouse at the deposition is to the effect, if you will, your Honor,that Mr.Anton had nothing to do with the negotiations; that in fact everything was consummated, the arrangements, whatever they were, were in fact made prior to Mr. Anton appearing on the scene. I think that is a fair reading of the deposition.

I agree with your Honor that your Honor is hearing different testimony at trial.

MR. MITCHELL: May I state that Mr. Weinberger has characterized a document which is not in evidence, to wit,the deposition. If he has statements in the deposition which he is relying upon to back up his statement that there was not a discussion with Mr. Anton, I wish he would point it out and read it so that we will have an opportunity to rebut his own lawyer's statement.

THE COURT: This part he just read is susceptible of that interpretation, if there is nothing previous in the deposition.

MR. MITCHELL: I would like to go into that on redirect. I would like also for Mr. Weinberger to state other portions of the deposition which he is relying upon.

THE COURT: That is what he is doing.

MR. WEINBERGER: For the record, your Honor, in line with Mr. Mitchell's statement, may I ask the witness to look at the transcript that your Honor has, which is the original transcript, unless Mr. Mitchell will stipulate for the record that your Honor has an original transcript executed by Mr. Rouse.

MR. MITCHELL: I will so stipulate.

Are you, Mr. Weinberger, offering the entire deposition transcript in evidence?

MR. WEINBERGER: I do, your Honor.

MR. MITCHELL: Your Honor, I will have to reserve as to portions to which I may have other objections. I obviously do not have objection to authentication. I may have objections on relevance and competence. I can't make a determination now of the entire deposition which consists of close to 100 pages in the form of one specific objection.

THE COURT: The purpose of the offer is to suggest that a fair reading of the entire deposition would suggest to me or to any reader that Mr. Anton's role in the signing of the contract and what happened on the day the contract was signed was an afterthought, after this deposition had been completed. I don't know of any way I can judge that but by reading the whole deposition.

MR. MITCHELL: May I respectfully make the suggestion that Mr. Weinberger can go through -- not today -- he can go through the deposition and point out those passages on which he wishes to rely.

THE COURT: I think that is a lot of nonsense, with due deference. Either the deposition as a whole supports Mr. Weinberger's position or it doesn't. I am going to read the deposition and I am going to conclude from reading it whether the witness was at that time describing a situation in which Mr. Anton did not figure.

Obviously one of the things that will be relevant is whether the questions logically called for Mr. Anton to figure in the situation.

MR. MITCHELL: May I suggest how do I then have an opportunity --

THE COURT: You read the deposition as a whole and you come to the conclusion that Mr. Anton is all over the place and show it to me.

MR. MITCHELL: Do I understand your Honor is accepting the document in evidence in its entirety?

THE COURT: I am accepting the document in its entirety for the purpose of establishing whether read as a whole it supports the argument that he had fair opportunity to describe Mr. Anton's activities at the meeting

which he described today and then didn't describe him in the same way as he did here.

MR. MITCHELL: Respectfully, may I state that I think that puts the burden on me to go through and read the entire deposition.

THE COURT: I'm sure you have done that several times.

MR. MITCHELL: And to findwhere I think certain statements may be taken out of context or there need to be interpretedas to certain language.

THE COURT: Precisely.

MR. MITCHELL: This is shifting the burden from Mr. Weinberger, who is cross-examining about a prior inconsistent document.

THE COURT: It is not so technical. Either this deposition supports Mr. Weinberger's theory or it doesn't. I am going to read it and get my own impression and after I have I will tell you what my impression is and whoever disagrees with it will have an opportunity to argue. If I say I disagree with you, you can cite for your argument pages 35, 40 or 50; and if I say I disagree with Mr. Weinberger: "Where do you find anything in here that is inconsistent?" he will answer page 20 or page 30 or 50.

MR. MITCHELL: Should your Honor do this and should your Honor refer to certain passages in the deposition, this will be presumably when Mr. Rouse is not here available to me and I will not have an opportunity to show him these passages and offer him an opportunity to explain these passages, which I think I should have a right to do. I can show them to the witness right now and ask him to explain what he meant by it if Mr. Weinberger shows me the passages right now.

THE COURT: You have shown one passage. Do you have any --

MR. WEINBERGER: Your Honor, just to recapitulate, I believe, your Honor, the combination of the questioning by Mr. Feldshuh and myself elicited a number of passages. I believe Mr. Feldshuh on cross-examination elicited that parts of Mr. Rouse's daily calendar diary and the hand-written notes were all not shown to Mr. Anton and made available to him.

THE COURT: It is not clear that the witness -- I wish you would call that memorandum handwritten notes. It is just confusing.

MR. WEINBERGER: Exhibit 2.

THE COURT: All it a memorandum, which is what it is, a handwritten memorandum. This is handwritten

notes and if in cross-examining Mr. Rouse both here and on the trial you confused him as readily as you have confused me, I am not too impressed by what he said. When you say handwritten notes -- what I have before me are all these kinds of things, being Exhibit 1 and a discreet memorandum, Exhibit 2, which you are talking about in generalities.

When I say handwritten notes I am talking about Exhibit 1 and my answers would be about Exhibit 1.

MR. WEINBERGER: I believe the cross-examination of Mr. Rouse by Mr. Feldshuh elicited, and I think it is a fair reading of the testimony, that much of the matters that are in Exhibit 1 and Exhibit 2 were not by virtue of the deposition made available or known to Mr. Anton. I think the record speaks to that and there are pages I can go back to.

THE COURT: Let's go back over the pages where you say that is so.

MR. MITCHELL: I ask that Mr. Weinberger point out specific passages so that I can then have the opportunity to ask Mr. Rouse about those passages on redirect.

THE COURT: What passages do you say bring that out?

MR. WEINBERGER: I say that page 31, where there was a colloquy as to what handwritten notes meant. I think a sufficient problem is raised there. I am referring to page 31 of the transcript.

MR. MITCHELL: Could you identify the line or lines?

MR. WEINBERGER: Yes, I think there is some indication here, your Honor, when the answer is "Yes, with the exception at that time they were in general handwritten notes. They were not typed.

"Q Whose handwritten notes were they in?

"A They were mine.

"Q Did you furnish any copy of these notes to Mr. Anton at that time?

"A No.

"Q Or to Mr. Leonard?

"A I can't remember whether we left a copy of the notes or not."

Your Honor, the copy of the notes that had to be referred to there is Exhibit 2, not Exhibit 1.

THE COURT: May I call your attention to the fact that this is your examination. If it is unclear it is your fault. I don't mean you, but Mr. Feldshuh. I am not going to speculate about what the witness meant. I don't

know in reading these questions whether Mr. Feldshuh is referring to Exhibit 1 or 2,and I am not going to attribute such knowledge to the witness.

MR. WEINBERGER: May I ask a question?

THE COURT: Yes.

BY MR. WEINBERGER:

Q I show you Exhibit 1 in evidence and ask you, did you at any time make a copy of Exhibit 1 and hand it to Mr. Leonard or Mr. Anton at the meeting?

A I did not.

Q So that any reference to making copies which is found on page 31 --

THE COURT: That question is excluded. When a witness is confused by a question you can't two years later treat him like a lawyer and argue about what he may have meant, because if thequestion had been made clear he would have answered differently.

MR. WEINBERGER: May I probe a little on this, your Honor?

THE COURT: Yes.

Q Mr. Rouse, you referred to handwritten notes on page 31 of your deposition and you said they were your handwritten notes, and you were asked:

"Did you furnish any copy of those notes to

Mr. Anton at that time?

"A No, sir.

"Q Or to Mr. Leonard?

"A I can't remember whether we left the copy of the notes or not.

"Q But you do have a definite recollection that you didn't furnish it to Mr. Anton; is that right, sir?

"A I'm fairly positive we didn't.

In terms of your answer about your memory at that time you contemplated the possibility that you did make copies of handwritten notes; isn't that a fact -- you just didn't have any memory; is that correct?

A I don't understand your question.

THE COURT: What were you referring to as the handwritten notes when you said that?

THE WITNESS: Not to confuse the issue any further, what I considered handwritten notes at that time were notes that I made in my Daily-Timer and also the notes that I had on this Exhibit No. 2.

THE COURT: You considered them both?

THE WITNESS: That is right, I consider both those handwritten notes.

Q So that in effect you are saying, sir, that you on September 20, 1972, speculated at that time, at

the time of the deposition, that you may have given Mr. Leonard a copy of your personal calendar notes; is that what you want to tell the Judge?

MR. MITCHELL: I object to the characterization, speculative.

THE COURT: Let him answer. He stated, "I don't remember."

What were you trying --

THE WITNESS: I said at that time and as I state now,I couldn't remember whether I had or not.

THE COURT: All right.

Q Did you ever make a photostatic copy of Exhibit 1 prior to bringing it with you to the deposition that took place on September 20, 1972?

A Not as far as I can remember.

Q So that wouldn't it be a fair statement, Mr. Rouse, that if you had made any reference to giving a copy of any document to Mr. Anton or Mr. Leonard, it had to be Exhibit 2 and not Exhibit 1; is that a fair statement, sir?

THE COURT: Do you understand what he is asking?

MR. MITCHELL: Your Honor, I don't understand this question.

THE COURT: I do. He is asking, referring to this question here (indicating), he is suggesting -- "I can't remember whether I left a copy of the notes or not" -- and he is suggesting if you were referring to Exhibit 1, namely,your diary,your Daily-Timer, you would have known that you had not left a copy.

THE WITNESS: That is right.

THE COURT: So therefore he suggests that this answer,"I don't remember that I left a copy or not," must be referring to the memorandum.

THE WITNESS: Right.

THE COURT: Is that correct?

THE WITNESS: I'd say yes, sir.

THE COURT: You agree on that.

MR. MITCHELL: That is Plaintiff's Exhibit 2.

THE COURT: Yes.

Q Therefore,sir, the question that was being addressed to you with regard to Exhibit 2 was this question at page 31, line 17:

"Q Did you furnish any copy of those notes to Mr. Anton at that time?

"A No, sir."

That answer was in reference to your memorandum, Exhibit 2, was it not?

THE COURT: That follows from what you just said, that it must.

A Right, yes.

MR. FELDSHUH: The answer is yes?

THE WITNESS: Yes.

Q Could you explain that difference and your testimony of yesterday and today?

A I don't think there is any difference at all. I never did state that I gave Mr. Anton a copy of any of it.

Q And your answer would be the same to the question on page 31, line 23:

"Q But you do have a definite recollection that you didn't furnish it to Mr. Anton; is that right, sir?

"A I'm fairly positive we didn't."

MR. MITCHELL: What do you mean by "it," Mr. Weinberger?

THE COURT: You are still talking about the memorandum?

MR. MITCHELL: Plaintiff's Exhibit 2.

MR. WEINBERGER: Plaintiff's Exhibit 2.

THE COURT: Right.

THE WITNESS: And the answer is I did not because I gave the copy to Mr. Leonard. What he did

with it, I don't know.

THE COURT: That is what he is saying and has been saying all day.

THE WITNESS: And the other statement, I did make that. We reviewed the notes with Mr. Anton. I didn't say I gave him a copy. I never have.

THE COURT: Is there anything in the deposition which contradicts that statement, that he reviewed the notes with Mr. Anton?

MR. WEINBERGER: The fact that the entire deposition, consisting of 93 pages, including exhibit pages, and I believe there was an additional deposition taken by a co-defendant, Kerns Manufacturing, that is appended to it with another additional five or six pages, indicates, your Honor, that no mention in that entire deposition is made with regard to Mr. Anton's activities as described by Mr. Rouse on trial.

THE COURT: Look at page 30, line 21, to page 31, line 8.

MR. WEINBERGER: 30?

THE COURT: 30, line 21, to 31, line 14.

MR. WEINBERGER: That, your Honor, line 19, on page 30, is not the testimony of Mr. Rouse, it is the testimony of his counsel, Mr. Lang.

THE COURT: You said line 21. He didn't say anything about line 19.

MR. WEINBERGER: Well, your Honor, the reference to a general conversation, would, I think, have to go back to the earlier part of the transcript. I can't pinpoint it, but my memory is that the general conversation had to do with pleasantries in the car.

THE COURT: Wait a minute, pleasantries?

"At the lawyer's office everything was reviewed with him as a part of the results of negotiations, yes, sir.

"Q When you say 'everything was reviewed,' are you including items 1 through 5 as the same appears on Defendants' Exhibit C," which is --

MR. VARY: The letter of May 13th, your Honor.

MR. FELDSHUH: The letter of May 13th.

MR. VARY: Exhibit 6, your Honor.

THE COURT: It now appears on Plaintiff's Exhibit 6 for identification.

"Yes, sir, with the exception at that time, they were in general handwritten notes, they were not

typed."

What's different from that and what he has been saying all day?

MR. WEINBERGER: Because this entire negotiations and conference and the showing of the documents took place in Mr. Leonard's office. Your Honor queried the witness, were you all sitting around the desk and so on. Now we are in the lawyer's office late in the afternoon.

THE COURT: Okay, that's a difference.

MR. WEINBERGER: Your Honor asked me to point out some inconsistencies and I called your Honor's attention to page 62 of the transcript which we quoted just a short while ago where Mr. Rouse repeated that he did not negotiate with anyone on an executive level other than Mr. Leonard. He didn't include Mr. Anton in --

THE COURT: He has never testified that he negotiated with Mr. Anton. There is not a word of testimony --

MR. WEINBERGER: The word, your Honor, was "communicated." I am sorry if I used the wrong word in descrkbingthe colloquy.

THE COURT: I merely observed that that one answer could not be construed as repudiating everything else he said, specifically what we have just been discus-

sing.

MR. WEINBERGER: I agree with your Honor if we take one word. The point I thought your Honor understood I made and I thought your Honor expressed it accurately, was that taking the entire deposition and taking the answers throughout this deposition, they spell out to a different type of situation than what Mr. Rouse has testified to with regard to the activities of Mr. Anton.

THE COURT: That is your point. I didn't say that was a fact.

MR. WEINBERGER: I tried to show instances in the transcript.

THE COURT: Proceed. Don't let me interrupt you. So far you haven't seemed to get anywhere.

MR. WEINBERGER: Did your Honor want me to proceed to point out further instances or did your Honor want me to proceed with cross-examination in general?

THE COURT: When you finish with this memorandum turn to something else. You have offered the memorandum for a purpose and your opponent said he wants to be in a position to explain what you refer to, so when you are finished with the memorandum -- first finish with the memorandum and then turn to something else.

MR. WEINBERGER: Your Honor, on page 39 of the

deposition, Mr. Rouse was then being addressed to what is now Exhibit 1 in the trial. Let me start with page 38, your Honor.

On page 38 is where the questioning begins with regard to Exhibit 1, the daily calendar.

"Q And it is a fact that the exhibit speaking for itself, there are listed three major points, is that right, sir?

"A Yes, sir.

"Q With respect to major point No. 1, you have a direct reference to Mr. Leonard, do you not, sir?

"A That's right.

"Q Have you a recollection with regard to major point No. 1 as the same appears on E-5 as to any talk with Mr. Anton as to Item No. 1 on that page?

"A No.

"Q Would you look at Item No. 2. With regard to Item No. 2, was that with regard to a talk you had with Mr. Leonard?

"A Yes.

"Q Is it the fact, sir, with regard to Item 2 and Item 3 on E-5 that that represented talks with Mr. Leonard?

"A That's right.

"Q Is it also the fact they didn't represent talks with Mr. Anton?

"A That's right."

So, your Honor, I am suggesting --

THE COURT: That's what he testified to yesterday.

MR. WEINBERGER: On examination, your Honor --

THE COURT: On direct examination he said exactly that same thing today. He said those memoranda, those notes he was taking were notes of conversations with Mr. Leonard. They were not conversations with Mr. Anton. He said it today, he said it in examination. He said subsequently he went over those conversations with Mr. Anton and Mr. Leonard. He may be lying in his teeth, but he is lying the same way both times.

MR. WEINBERGER: Your Honor, I have only to refer to my handwritten notes as to Mr. Rouse's testimony, but your Honor will get, I am sure, a copy of the daily transcript, but from my handwritten notes, may I please state what I remember Mr. Rouse testifying with regard to the meetings on May 12th and my shorthand written notes, your Honor, say --

MR. MITCHELL: Mr. Weinberger, is this a predicate for a question?

MR. WEINBERGER: I am having a colloquy with your Honor's permission.

THE COURT: Proceed.

MR. WEINBERGER: My handwritten notes indicate that Mr. Rouse testified that they reviewed the purchase order, they reviewed the separate agreement, the inventory agreement presumably. They reviewed the handwritten notes. A copy was run and left there. Coleman was not present. Anton given copy of handwritten note. Leonard requested copy of handwritten sheet.

THE COURT: He did say that. That's contrary to what he is saying now. I remember his saying he gave the handwritten note to Anton. He apparently misspoke. It is quite clear now he never did give the handwritten note to Anton.

MR. WEINBERGER: Finally, your Honor, may I just say that I believe that the deposition in its entirety has made the point that I try to single out areas where we can find specific inconsistencies but when read in its entirety, it paints a different picture from what the defendant is today as to the activities of Mr. Anton.

MR. MITCHELL: Your Honor, I will state if Mr. Weinberger wants to put in the deposition in his case, I will have no objection to his putting it in, subject to

specific objections at the time as to particular questions and answers on the grounds of relevancy and so on.

Do I understand that Mr. Weinberger is now asking to put the entire deposition in as evidence in his case?

MR. WEINBERGER: That's right, your Honor, and I ask that it be marked as a Defendants' Exhibit B.

THE COURT: Okay. It is marked.

MR. MITCHELL: I would like to have an opportunity to review the deposition --

THE COURT: It is subject to a motion to strike any particular part that you think are unduly prejudicial.

(Defendants' Exhibit B received in evidence.)

THE COURT: I will point out, Mr. Weinberger, it will be strange, indeed, if an examination of this witness conducted by your partner did not paint a different picture than the examination of the same witness conducted by your opponent.

MR. WEINBERGER: I can only comment, your Honor, to the extent that at a discovery proceeding such as a deposition, it is an attempt to find out what happened. I respectfully submit, your Honor, that the total failure in its entirety of the deposition to paint a

picture --

THE COURT: At a deposition a witness is allowed only to answer the questions that are put to him. He is not allowed to paint pictures.

MR. WEINBERGER: I am confident, your Honor, that the question there would be generalized questions and not limiting Mr. Rouse as to who was present and what was said.

THE COURT: The only time that Mr. Rouse tried to explain himself, he was cut off by Mr. -- he said did Mr. Leonard give you the reason. He said not specifically. That, to a layman, might mean anything in the world. Had he been permitted to go on, you might have found out what he meant, but he was cut off.

"I object to anything after not specifically."

I don't know what value there is in thatquestion and answer.

MR. FELDSHUH: May I have a comment, your Honor, since I conducted this deposition?

THE COURT: Yes, sir.

MR. FELDSHUH: It is manifest, your Honor, that counsel for the witness at a deposition has the right to interrogate when counsel who is doing the interrogation --

THE COURT: Any counsel for the witness who does

that is an idiot.

MR. FELDSHUH: That may well be, and he has the opportunity.

THE COURT: If he exercises it, he ought to be disbarred.

MR. FELDSHUH: As a matter of fact, unfortunately, Mr. Lang, who is of Breed, Abbott & Morgan, did take that opportunity and he did interrogate in this instance.

THE COURT: Then he ought to be disbarred.

MR. FELDSHUH: As far as I am concerned, your Honor, I did what I did on that deposition --

THE COURT: Of course you did, but all you accomplished was, by the asking of specific questions to foreclose different answers to that particular question. You didn't foreclose the painting of a different picture by different questions.

MR. FELDSHUH: Possibly so, your Honor.

Q Mr. Rouse, you testified that on the morning or sometime on May 12 you had occasion to meet Mr. Anton for the very first time. What time was that, sir?

A It was roughly around noon.

Q And where did you see Mr. Anton for the very first time?

A At the International Hotel in the car.

Q In a car. In other words, were you waiting for the car to arrive at the hotel?

THE COURT: The testimony is, in case you have forgotten it, Mr. Anton came in a car, he is not in the car and they went to the --

Q Mr. Anton never alighted from the car to stay at the hotel prior to going to American Marc, is that correct?

THE COURT: No, he didn't. Let's get on to something new.

Q Did you have occasion to see Mr. Walper that day prior to seeing Mr. Anton?

THE COURT: The testimony on that is he saw Mr. Walper around there. He didn't see him in the meeting. Mr. Walper took his colleague to the airport.

MR. WEINBERGER: May I continue along those lines, your Honor?

THE COURT: Yes. Assume that I remember the testimony and point out what you are going to and go on.

Q Did you see Mr. Walper prior to going to American Marc?

THE COURT: On that day.

A To the best of my recollection, no.

Q What did you do that morning, do you recall?

MR. MITCHELL: I object to a question quite that broad, your Honor. If it could be pinpointed --

Q Did you have occasion to leave the hotel that morning of the 12th?

A I can't remember exactly what I did that morning.

Q Was Mr. Coleman with you at all times?

A He was with me part of the time.

Q Did you have occasion to part company with Mr. Coleman any time on the morning of the 12th?

A We stayed in two different rooms. I'm sure that we did.

Q Well, other than for staying in two separate rooms, did you have occasion, did Mr. Coleman or you have any other business that would require you to separate that morning?

A No. Not that I can remember.

THE COURT: Neither of you had any clandestine affairs.

MR. MITCHELL: I assume not trying to entrap the witness, he is excluding trips to the bathroom and so on.

Q Did you have occasion to see Mr. Walper any time that day other than on the premises of the American Marc?

A As I remember, that's the only time I saw him, was when he was getting in the car to take Mr. Coleman.

Q I call your attention on page 81, your Honor -- beginning on page 80 for purposes of clarifying the matter, line 6:

"Q Did you enter into any agreement with Mr. Walper?

"A Yes, sir.

"Q As a finder?

"A Yes, sir.

"Q Is that agreement in writing?

"A Yes.

"Q Was Mr. Walper paid by Teledyne?

"A Yes.

"Q In accordance with the terms of that agreement?

"A Yes.

"Q Do you have a copy of that agreement?

"A Yes."

MR. WEINBERGER: Your Honor, for the record, that agreement, as your Honor knows, is marked as Defendants Exhibit A in evidence.

THE COURT: Defendants' Exhibit A is what is here referred to as Exhibit L for identification.

MR. WEINBERGER: That is correct, your Honor. Will Mr. Mitchell stipulate to that?

MR. MITCHELL: Let me look at theindex a second.

Yes.

Q Question bottom of page 80 on line 25:

"Q Mr. Rouse, Defendants' Exhibit L for identification is dated May 11, 1971.

"A Yes.

"Q Is that the date upon which it was signed?

"A If you will notice underneath, I signed it on May 12th, the morning of May 12th.

"Q Was it signed at the lawyer's office?

"A No.

"Q Was it signed before you went to the lawyer's office?

"A It was.

"Q Was this signed before or after you received the purchase order?

"A To the best of my recollection after I received the purchase order. Yes, I am pretty sure.

"Q Where was it signed?

"A It was signed at the International Hotel.

"Q Was it handed to Mr. Walper on the occasion when it was signed?

"A Yes, it was.

"Q Mr. Walper was present duringthese negotiations up to that point, is that the fact?

"A Yes.

"Q Did you ever speak to Mr. Walper thereafter with respect to the performance of the contract?" and so on.

In light of that testimony, Mr. Rouse, could you explain the events at the International Hotel to the Judge?

A Idon't understand your point.

THE COURT: What was the date of the meeting with Mr. Anton?

MR. WEINBERGER: May 12, your Honor, 1971.

THE COURT: The point is this seems to indicate that you handed the contract to Mr. Walper on

May 12 and he wants to know how you could have handed it to him without seeing him.

Is that the point?

MR. WEINBERGER: I'll stand by that statement, your Honor.

THE WITNESS: As I said earlier, I can't remember exactly whether I saw him or not. As I remember the agreement was dated the 11th and I can't remember the date it was signed.

Q Well, may I show you exhibit --

THE COURT: What difference does it make? Could you tell me? Suppose he did see him? What would follow from that?

MR. WEINBERGER: Your Honor, the point here again, it goes to, I think, the credibility of this witness.

THE COURT: Do you have anything better than that for credibility?

MR. WEINBERGER: And his recollection, your Honor, of the events that took place on May 12. I think that there are --

THE COURT: You mean you equate the ability to remember when he signed this --

MR. WEINBERGER: No, your Honor, I am talking

about the entire transaction with Mr. Walperon May 12. I think --

THE COURT: There is no transaction with Mr. Walper that I have heard of that's an issue here. Walper is the finder.

MR. WEINBERGER: The finder.

THE COURT: What's the issue about Mr. Walper?

MR. WEINBERGER: I tried to elicit from Mr. Rouse a meeting with Mr. Walper which he denied.

THE COURT: Suppose there would have been a meeting? What difference would it make?

MR. WEINBERGER: Had he testified that way, that would have been one thing.

THE COURT: Before false testimony becomes relative, there has to be some motive for giving the falsehood. Otherwise you assume it's a mistake. What difference would it make whether he met Mr. Walper on the 12th or whether he hadn't. Maybe I am missing something.

MR. WEINBERGER: I think, your Honor, that what is the issue here is the participation of the board of directors as alleged in this complaint --

THE COURT: Is Mr. Walper a member of the board of directors?

MR. WEINBERGER: No, but I would like to point out to your Honor that only Mr. -- from New York the only member of the board of directors --

THE COURT: What difference on that issue does it make whether he met Mr. Walper on the 12th or whether he didn't?

MR. WEINBERGER: Your Honor, I think the point of that issue is that to show that Mr. Anton did not know and could not have known about any arrangement --

THE COURT: How could he meeting Mr. Walper, going to bed with Mr. Walper, have any bearing on that issue?

MR. WEINBERGER: I will tell you why, your Honor, because if this arrangement was so open and notorious and known to Mr. Anton, I submit, your Honor, that there would have been no need to have a meeting at the hotel the morning of May 12 before Mr. Anton came to California. And I submit, your Honor, that the depositoin points out that such a meeting took place not in the presence of Mr. Anton, not on the premises of American Marc where Mr. Rouse testified that Mr. Anton and Mr. Walper was in the vicinity, but, in fact, that such an arrangement, and I am sure your Honor knows that we don't consider that arrangement a proper one, that that

arrangement was solidificd and consummated in writing in a hotel room prior to Mr. Anton coming to California.

THE COURT: There is no suggestion in the testimony that Mr. Anton saw that contract or knew anything about that contract except what he told him in the course of the -- alleges he told him in the courrse of his discussion of the whole thing.

MR. WEINBERGER: I submit, your Honor, that this testimony must be considered with the current testimony as to whether or not Mr. Anton knew about Mr. Walper's participation in this situation on May 12, 1971. And I believe, your Honor, that the entire circumstances of this meeting that is now denied by Mr. Rouse --

THE COURT: You mean the meeting with Mr. Walper?

MR. WEINBERGER: With Mr. Walper.

THE COURT: You make an offer of proof what you think happened there --

MR. WEINBERGER: Your Honor, it is in the deposition on page 82 and I have read it.

THE COURT: Okay. I assume that the witness is wrong in saying he didn't see Mr. Walper on htat day and he did see him and he handed him the document on that day.

MR. WEINBERGER: May I continue, your Honor?

THE COURT: Yes.

Q Mr. Rouse, Defendants' Exhibit A bears your signature on it, does it not?

A What is that?

Q That is the contract with Mr. Walper.

THE COURT: Yes, it does. He said so several times.

A Yes.

Q Did you sign that document in the presence of Mr. Walper?

A I would assume that I did.

THE COURT: You have no recollection at this time?

THE WITNESS: I recollect -- the best of my recollection, yes, I signed it in his presence.

Q When you signed it in his presence, did Mr. Walper sign it in your presence?

A The best of my recollection, yes.

Q Well then, at the time that you both signed it, did you review the contents of this document with Mr. Walper?

A I would say so.

Q And did Mr. Walper read this document before he signed it in your presence?

THE COURT: It's on his stationery, on Mr. Walper's stationery or purports to have been written by Mr. Walper.

MR. WEINBERGER: Your Honor, the copy that was produced is -- bears no letterhead but has --

THE COURT: Who prepared the document, you or Mr. Walper?

THE WITNESS: To the best of my recollection, he got it typed and I don't know where.

Q By the way, you knew -- did you know anything about Mr. Walper prior to meeting him in California?

THE COURT: He testified he never heard of Mr. Walper until Mr. Walper got him on the telephone.

Q Did you have occasion to know -- well, when you spoke with Mr. Walper on the telephone, did you have a discussion about who Mr. Walper is?

A He told me he was Walper of Associates.

Q Walper Associates. Did he say what kind of business that was?

A He said he was -- no. I guess he didn't.

Q Did he say that he was in the business of being a finder?

A He told me he had been retained by American Marc EON to find a subcontractor for hte 1.5 kw generator sets.

THE COURT: When I said Mr. Weinberger could cross-examine, I didn't say you could start a whole cross-examination. You have been over this before.

MR. WEINBERGER: I wanted to call to the attrneion of your Honor here is a document, Exhibit A, purportedly signed by a businessman, in the business of a finder, no letterhead on it, nothing --

THE COURT: You don't have to ask him all those questions to point that out?

MR. WEINBERGER: May I continue,your Honor?

THE COURT: Are you through with this exhibit, the deposition?

MR. MITCHELL: Your Honor, has the deposition been marked as an exhibit?

THE COURT: The deposition has been marked as an exhibit pursuant to a motion to strike.

MR. MITCHELL: Is it Exhibit B?

THE COURT: It's Exhibit B.

Q You used the word consulting services --

THE COURT: Does thathave anything to do with this deposition?

MR. WEINBERGER: Yes, your Honor.

THE COURT: What does it have to do with this deposition?

MR. WEINBERGER: Your Honor, Mr. Rouse testified that Mr. Walper was a finder and he paid a finder's fee.

THE COURT: Right.

MR. WEINBERGER: I respectfully submit, your Honor, that we will be able to show that there is testimony by Mr. Walper to the contrary, but with regard to the document itself, I want to ask Mr. Rouse --

THE COURT: You have asked and been given permission to conduct examination limited to Defendants' Exhibit B. What does that have to do with Defendants' Exhibit B?

MR. WEINBERGER: All right, may I proceed on that?

THE COURT: You tell me.

BY MR. WEINBERGER:

Q In Defendants' Exhibit B, you say you paid a finder's fee, did you not?

THE COURT: He said that.

Q Will you tell me what consulting services --

THE COURT: Thathas nothin to do with the exhibit. You continue the cross-examination.

MR. FELDSHUH: Your Honor, may we have a short recess?

THE COURT: Yes, and try to figure out what's left and not just go over everything that's happened before.

MR. FELDSHUH: Thank you.

(Recess)

MR. WEINBERGER: A few more questions, your Honor.

THE COURT: Why do you need other documents beside the transcript?

MR. WEINBERGER: I wanted to make reference, your Honor to -- am I limited, your Honor, to the transcript?

THE COURT: You are limited to the transcript. That's what you represented you knew more about than anybody else. You are limited to the transcript. He is doing the rest of hte case.

MR. WEINBERGER: Your Honor, may I please have an opportunity to lay the groundwork for the cross-examination on the transcript.

Q Mr. Rouse, you recall testifying that you

wrote a letter to Mr. Leonard dated May 13, 1971, Exhibit 6, did you not?

THE COURT: Yes, he does recall.

Q You recall testifying, do you not, that the basis for supplying some of the information further was the use of Exhibit 2, was it not?

A Just in Exhibit 1.

Q So that when you returned to your office in Muskegon, Michigan, you had Exhibit 2 with you?

A That's right.

Q Do you recall what you did with Exhibit 2?

A I do not.

Q Did you put it in your files?

A We couldn't find it in the files.

Q When did you look for it?

THE COURT: What's that got to do with the transcript?

MR. WEINBERGER: I will get to that, your Honor.

THE COURT: Get to it. We have gone all through this. He can't find Exhibit 2. We went all through this. What are you trying to prove? I know that he lost Exhibit 2 and he didn't find it.

Q Did you make reference at any time -- withdrawn.

I withdraw the question.

MR. FELDSHUH: Your Honor, just to expedite matters, I'd like to call your Honor's attention to the following, namely, the offer of proof that was contemplated here was to show that at pages 41 to 47 -- your Honor, I don't want to belabor this at this time. Pages 41 through 47, the thrust of the interrogation was, has Mr. Rouse produced all the documents from his file referrable to the subcontract at that time and in due course he testified that he had. I take it, sir that by the testimony that has been adduced today, that Exhibit 2, never being mentioned during the course of the transcript and the deposition, has come to be a very viable and a very potential document. One which a witness would hardly forget about and nowhere on pages 41 to 47 is there any reference to an Exhibit 2 with regard to being a document that was non-existent or not found or anything of that sort. And that was the only purpose of it.

THE COURT: Thank you.

BY MR. FELDSHUH:

Q Mr. Rouse, did you ever hear of the word DECASA?

THE COURT: What?

Q DECASA, D-E-C-A-S-A.

A That's an agency of the government.

Q Of the United States Government?

A Right.

Q What is its function?

A It's a contrac ting, inspecting agency.

Q Did that agency have anything to do with the 1.5 generator sets as covered by the subcontractor?

A I really couldn't tell you. Mr. Coleman could answer that better than I can.

Q And also I assume that the contract administration section of Teledyne would have knowledge of this as well?

A That's right.

Q That is, Mr. Anderson, Mr. Saunders and that group?

A Right.

Q At no time did you have a direct contact with DECASA?

A I did not.

MR. FELDSHUH: Your Honor, DECASA is an abbreviation of many words. It's department of something or other, and even I don't know it, but everybody has referred to it as DECASA. Later on I will get the formal name of this agency and acquaint your Honor with it.

Q Mr. Anderson was a member of the contract administration section of Teledyne?

A That's right.

Q Mr. Anderson was in touch with you in connection with the performance of the subcontract in the months of September, October, November, 1971?

A At certain different periods he was.

Q In connection with his work as to the performance of the subcontract, didhe ever talk with you as to changing the terms of the subcontract?

A Like I stated earlier, when I returned from California I submitted all data to the contract administration department and Mr. Coleman, and from then on they handled everything to do with the contract as far as any changes, modifications or performance.

MR. FELDSHUH: Mr. Mitchell, would you produce the letter of October 9, 1971, the same having been marked as 20J, Exhibit 20J? A letter addressed to American Marc and written by Mr. W. A. Anderson.

MR. MITCHELL: Mr. Feldshuh, the items which are -- which have been demoninated on the deposition in the 20 series, 20A through something like 20K were all documents which were produced by Eon. They were not produced by plaintiff. Therefore, the only

copies we obtained of these documents were obtained from Mr. Feldshuh's own clients. He is now asking me to produce a document which he first produced and was marked at a deposition.

MR. FELDSHUH: It is the fact, is it not, Mr. Mitchell, that inconnection with your taking of depositions, the plaintiff's taking of depositions, you did mark this particular paper?

MR. MITCHELL: If it indicated it was marked with a number and a notary's signature on it, I have no doubt it was marked.

MR. FELDSHUH: Okay.

Would you kindly staple this together, please, mark it for identification and I will offer it.

(Defendants' Exhibit C was marked for identification)

MR. FELDSHUH: I show you this paper, Mr. Mitchell, and will you stipulate for the record that this is the paper which was written by Mr. Anderson, a copy of the paper and bears at the top thereof the legend Continental Motors?

MR. MITCHELL: I take it, Mr. Feldshuh, you are not intending to offer any of the handwritten statements on the lefthand margin and onthe bottom.

Certainly it appears to be on the letterhead of Teledyne Continental Motors and I don't dispute that.

Q I'll just ask the witness: Sir, would you look at Defendants' Exhibit C for identification and I ask you, sir, would you tell me inwhose handwriting that may be?

THE COURT: This is a letter from --

MR. FELDSHUH: Continental Motors to American Marc.

THE COURT: How would he know whose handwriting it is --

A No.

Q Do you see the name Coleman here?

A I do.

Q Do you recognize that handwriting, sir? The legend 10-9-71 underneath?

A I can't identify it.

Q Can you read the next name underneath it? Is that Campbell?

A It looks like R. R. Campbell.

Q Do you know who -- was there a Mr. Campbell connected with Teledyne?

A He was a plant controller at Walterboro.

Q Mr. Coleman was his supervisor?

A No, Mr. Coleman reported to the controller at Mobile, Alabama.

Q So he worked alongside of Mr. Coleman at Walterboro?

A That's right.

Q On or about October 9, 1971, did Mr. Anderson talk to you about changing the terms of the purchase order M1257?

A As I stated earlier, I was not involved in any of the purchase order changes after the original negotiations.

Q Would you lookat Defendants' Exhbit C for identification and tell me, sir, if that refreshes your recollection as to any requested changes in the purchase order?

A I have no knowledge of this. I waa not involved.

THE COURT: It doesn't refresh your recollection?

THE WITNESS: It does not.

Q Sir, I show you now Plaintiff's Exhibit 9 for identification -- I beg your pardon, Plaintiff's Exhibit 9 in evidence, your Honor, and I ask you to look at it, sir. You had previously identified it.

THE COURT: Which is Plaintiff's 9?

MR. FELDSHUH: Plaintiff's 9, your Honor, is a letter dated October 9, 1971, from American Marc to Mr. Homer Coleman.

A Yes, I recognize this because I received a copy of the letter and it's in our files.

Q You will note that with regard to this letter is there a reference to something occurring on October 9, 1971?

A Yes.

Q Now, looking at Defendants' Exhibit C for identification, and reading that reference, was it Defendants' Exhibit C for identification that Mr. Leonard was discussing --

THE COURT: How is this relevant to this witness' testimony?

MR. FELDSHUH: It has to do, your Honor, with the question as to how money was to be paid to Teledyne.

THE COURT: I understand. This witness had nothing to do with these documents, he tells us.

MR. FELDSHUH: He got a copy of it.

MR. MITCHELL: Your Honor, he has a copy of the document, which is Plaintiff's 9 in evidence. He testified he had not seen the other document. I don't

know how he can be asked a question on the other document which he hasn't seen until the present.

MR. FELDSHUH: I appreciate that.

THE COURT: Go ahead and see what happens.

A There is no way I could answer your question unless I read the two completely and analyzed the two.

Q So as to save time, would you just read, please --

THE COURT: Why do you want him to read a document he has never read before?

MR. FELDSHUH: I want to connect it with a document he did read.

THE COURT: We will have a witness on the stand that knows about that document. Isn't Coleman --

MR. MITCHELL: Yes, your Honor, Coleman will testify.

MR. FELDSHUH: Is Anderson going to be here?

MR. MITCHELL: That's a decision I haven't made yet. Mr. Coleman will be here. Mr. Coleman, his name appears to be on the bottom of that letter.

THE COURT: Tell me what you propose to prove by this?

MR. FELDSHUH: I want to prove by this, your Honor, in Anderson's letter of October 9, there is a

talk about changing the terms of the payments on page 2.

THE COURT: You proved that.

MR. FELDSHUH: He says I want the terms 30 days net no matter what happens.

THE COURT: Payment in full will be required within 30 days from the day of the invoice and must be forwarded to the same Atlanta payment address as noted in the preceding paragraph.

MR. MITCHELL: Your Honor, is this on the record? This is not in evidence yet.

MR. FELDSHUH: You just made a stipulation with regards to it. I will offer it, your Honor.

THE COURT: What objection do you have to it?

MR. MITCHELL: For one, your Honor, the witness can't identify it. It was turned up in the defendants' offices. Was not turned up in our offices.

MR. FELDSHUH: It's on Continental stationery.

MR. MITCHELL: I will agree in terms of -- to save some time I think, Mr. Feldshuh, that Mr. Coleman will be able to identify it. In terms of authenticity, I have no dispute with you as to authentication.

MR. FELDSHUH: May I just point out one thing, your Honor? Read the top where he talks about

October 9, 1971.

THE COURT: Mr. Leonard?

MR. FELDSHUH: On October 9, 1971 Mr. Anderson handed me a letter, etc., etc. And that, I take it, is the letter, your Honor, Exhibit C.

THE COURT: I don't see why you want to ask this witness about it.

MR. FELDSHUH: I want to ask about the change in terms of payment.

THE COURT: He said he had nothing to do with it.

MR. FELDSHUH: Except one point. What was his intention from day one.

THE COURT: You can ask him about his intention from day one but can't --

MR. FELDSHUH: I want to prove here we got 30 days net and somebody is saying here, listen, you will pay me 30 days net --

THE COURT: He didn't say it. Ask someone who said it.

Q When you read -- did you read this, Plaintiff's Exhibit 9 in evidence,when you got it?

A I would assume thatI did.

Q Having read it, did you notice -- did you

take note of thethird paragraph onpage 2?

A I have no recollection of it.

Q Read it, please.

A I understand what I am reading but I have no recollection of doing anything about it when I saw it.

Q Sir, when you received this letter and you assumed that you read it, did you do anything with regard to the words that appear here:

"However again for the record I explained to all present that the sale, invoice request for progress payment, payment by the government of progress payment and then 'skimming' ofthe money due to TCM from that payment to TCM by the Bank of America."

When you saw those words skimming, did you do anything, didyou call Anderson?

A I can't remember.

Q At the time you read those words, did the words skimming strike you in any way whatsoever?

A I can't remember.

Q It is the fact, however, thatyou didn't communicate with Leonard upon the occasion of the receipt of that copy of the letter?

A As far as I can recollect, no. Because, as I stated earlier, it was the responsibility of the

contract administration people to do this thing.

THE COURT: Just answer questions.

THE WITNESS: I'm sorry, sir.

THE COURT: What's the copy attached? This letter refers to a copy attached? Where is the copy?

MR. FELDSHUH: May I see it, sir? This is the plaintiff's exhibit, not mine. I haven't got it.

THE COURT: This Plaintiff's Exhibit has a -- Plaintiff's Exhibit 9, the second last paragraph on the second page refers to copy attached. What is that?

MR. MITCHELL: Excuse me, your Honor?

THE COURT: Plaintiff's Exhibit 9, the second last paragraph on page 2, second last line, has the words copy attached. What is that?

MR. MITCHELL: I think, your Honor, that this referred -- this was not attached -- nothing was attached to our file. I believe this document, again, was obtained from defendants. I think the reference there is to modification 9.

THE COURT: This document couldn't have been obtained from the defendants. It's addressed to you. Homer Coleman.

MR. MITCHELL: I believe it's modification 9 to the American Marc purchase order whichis in evidence

as part of Plaintiff's 4 in evidence.

THE COURT: I see.

MR. MITCHELL: It refers to putting into the purchase order itself M-1257, the Bank of America arrangement.

THE COURT: I see. Okay.

MR. FELDSHUH: I will offer this now. Do you have any objection?

MR. MITCHELL: I have no objection except that -- may I have a conference, your Honor, with Mr. Feldshuh?

THE COURT: Yes.

(Discussion off the record)

MR. MITCHELL: Your Honor, at the present time I will have no objection to the introduction of this exhibit in evidence subject to Mr. Coleman's connecting it and I think Mr. Coleman can connect it.

THE COURT: All right. So it's received.

(Defendants' Exhibit C was received in evidence)

THE COURT: What do you suggest -- I don't quite get the point of your examination. What do you think he should have done when he saw skimming?

MR. FELDSHUH: My sense of the word skimming,

your Honor, is that they would take the money that's in the account, they -- whatever the invoice is, if it's less than the amount that's been received fromthe government, they would skim it off, take it and pay it, they would use the account for other purposes, etc.

THE COURT: After they had skimmed it off?

MR. FELDSHUH: Not necessarily. You see, your Honor, the point that your Honor -- your Honor is reading into this the question afterthe skimming. I respectfully submit --

THE COURT: Not that you have to try your case in any order that you don't want to try it, but just for my information, what do you think was the purpose of this letter, of sending this letter by him to --

MR. FELDSHUH: You mean by --

THE COURT: By him to Leonard and back and Leonard's letter to the bank, what do you think the purpose of all that was.

MR. MITCHELL: Could you identify the letter you are referring to right now, your Honor?

THE COURT: I am referring tothis witness' letter of May 12. Plaintiff's Exhibit 6, which was signed by Mr. Leonard and accompanied -- the signed copy accompanied by Plaintiff's Exhibit 7, was it?

MR. FELDSHUH: Yes, the letter tothe bank.

THE COURT: The letter to the bank.

What's your theory why --

MR. MITCHELL: It's Exhibit 8, your Honor.

MR. FELDSHUH: My theory is, sir, this was merely a procedural mechanism for the deposit of money from the govrenment into an account identified through Teledyne. The account was, as will be proven, your Honor, was in existence long before --

THE COURT: What was the purpose of writing these letters?

MR. FELDSHUH: To -- Teledyne wanted to be sure there was an identifiable account --

THE COURT: What advantage was that to Teledyne --

MR. FELDSHUH: If Teledyne had --

THE COURT: What was the advantage of knowing, what was your theory was the advantageto Teledyne of having identifiable account if they didn't have to keep the money --

MR. FELDSHUH: They would know that this account would be used for clearing the proceeds of the government check. That in the event they had to look to an account to grab --

THE COURT: What's the point of grabbing an account if there is nothing in it?

MR. FELDSHUH: Well, by the same token, your Honor, the point of it is because there could be ten accounts of Eon --

THE COURT: What difference does it make? If there is general -- if Eoj can put a thousand dollars in the account today and take that thousand dollars out tomorrow, what good is it to Teledyne?

MR. FELDSHUH: It all depends. The reason for it is, your Honor, under the law of California, you could attach that account fast, quickly. Without anything more.

THE COURT: Under the law of any state in the union you can't attach an account unless there is money in it.

MR. FELDSHUH: That may well be but by the same token, they don't have to go looking over the United States --

THE COURT: Why not? According to your theory there is nothing in the arrangement to stop your client from taking the money out the day aftre the government puts it in.

MR. FELDSHUH: Right.

THE COURT: What good is it?

MR. FELDSHUH: It isn't for me to look to their --

THE COURT: I understand, but what did your client think they were giving these people?

MR. FELDSHUH: They were giving to them a place, a depository where the money would be cleared.

THE COURT: But that's all?

MR. FELDSHUH: As it turned out, that was all for this reason. For this reason. If it was intended, as they claim, that --

T4 THE COURT: Don't tell me what they think. Just tell me what you think the value of this arrangement was.

MR. FELDSHUH: For them to know that when they invoiced Teledyne there would be a depository to which they could look for the issuance of a cashier's check, which they wanted to get paid by, a cashier's check.

THE COURT: What difference does it make to them how they were paid?

MR. FELDSHUH: That was their stipulation. They wanted to make sure if they got a check, they didn't want to worry about it.

THE COURT: What difference does it make to them what account the cashier's check came out of?

MR. FELDSHUH: They wanted to have a choice of the bank from which the cashier's check would come.

THE COURT: What good would it be to have a bank if there was no money, according to your theory, there was no obligation to keep ten cents.

MR. FELDSHUH: There was an obligation to clear the check through the account.

THE COURT: What good do you think or do you contend that this document as so construed does?

MR. FELDSHUH: Thereupon, when the money was cleared through the account the Bank of America should issue its cashier's check.

THE COURT: If there is any money left.

According to your theory a check could be coming in, as I understand your theory, let's call it a thousand dollar check could be due from the government today.

MR. FELDSHUH: Right.

THE COURT: And upon its receipt they could draw a thousand-dollar check and pay your lawyer's fees.

MR. FELDSHUH: Upon its receipt? Wrong.

THE COURT: Why not?

MR. FELDSHUH: For this reason: on its receipt we would be obliged to deposit that check in the Bank of America account.

THE COURT: That is correct.

MR. FELDSHUH: That is at that point in time, based upon the letter of May 25 to Mrs. Dye, that is the Bank of America lady, says that at that point the Bank of America is instructed to issue a cashier's check against the clearance of the government's check.

THE COURT: But the government's check --

MR. FELDSHUH: It also provides that the

government's check would be far larger or greater than the amount that was due to Teledyne, owed to Teledyne, but as far as the Bank of America was concerned it had instructions to issue a cashier's check.

THE COURT: If everytime they got a government check they immediately issued a cashier's check to the amount involved, why have we got a lawsuit here?

MR. FELDSHUH: There came a point in time where they didn't do it and the money was used forother purposes.

THE COURT: There would have been no lawsuit if they paid the money. At what point in time did that happen?

MR. FELDSHUH: That happened way down into May of 1972. Up to that point Teledyne had received exactly back and forth as soon as the government check came. They received some $700,000 or $800,000.

THE COURT: Up to that time Eon was proceeding --

MR. FELDSHUH: The Bank of America.

THE COURT: Under instructions from Eon.

MR. FELDSHUH: Oh, yes.

THE COURT: Was proceeding as though the contract meant what the plaintiff claims it meant; right?

MR. FELDSHUH: Up to that point in time

Teledyne was getting paid everytime there was a check.

THE COURT: Would you answer my question?

MR. FELDSHUH: May I have the question again?

THE COURT: Up to that point in time Eon and the Bank of America together were acting in a manner consistent with the agreement as the plaintiff construes it; is that correct?

MR. WEINBERGER: No, sir.

THE COURT: Why not?

MR. WEINBERGER: Because, your Honor, the parties were acting in accordance with the written arrangements. It is now, subsequent to the controversy, that Teledyne, the plaintiff,now seeks to create a trust arrangement.

THE COURT: Wait a minute, please.

MR. WEINBERGER: It is not how they were operating.

THE COURT: Wherein was the conduct described up to the point inconsistent with a trust arrangement? I am not saying that you concede there was one. I'm asking you a question.

MR. WEINBERGER: Yes.

THE COURT: That question can be answered yes or no: was the conduct of Eon and the Bank of America

up to this point in time to which Mr. Feldshuh has referred, was it or was it not conduct consistent with the theory that they were trustees?

MR. FELDSHUH: No.

MR. WEINBERGER: No.

THE COURT: Why not?

MR. WEINBERGER: A number of reasons. Because, No. 1, let us take the position of the parties respectively.

THE COURT: All I am asking is one simple question: the conduct of Eon and the Bank of America, was that conduct consistent or inconsistent with the trust relationship up to that time?

MR. WEINBERGER: It was inconsistent with the trustee relationship for a number of reasons. One, your Honor, is the method of payment required, a conduit, and that was the Bank of America.

THE COURT: Wait a minute. Will you please answer my question? As I understand what has been told to me, up to this point in time, May, 1972 --

MR. FELDSHUH: May, 1972, roughly, your Honor.

THE COURT: Up to May, 1972, everytime a check came from the government it was deposited in this bank.

The portion thereof attributable to the plaintiff was sent to the plaintiff.

MR. FELDSHUH. Right.

THE COURT: And that was done everytime. Now point out to me wherein that conduct is inconsistent with the trustee relationship. I don't say it establishes a trust relationship. Wherein is that conduct inconsistent with a trust relationship?

MR. WEINBERGER: Because, your Honor, the parties required the bank to do the supervising of whether or not the underlying Teledyne invoices which were used to get the government progress payment was coordinated in fact.

THE COURT: How is that inconsistent with the trust relationship?

MR. WEINBERGER: If there is a trustee relationship there would not be the requirement that American Marc would have to submit copies of Teledyne invoices which were underlying government payment to go to the bank and then have the bank issue a certified check payable to Teledyne.

I am suggesting that that arrangement required more than imposing a trust between the parties, because they were in fact a debtor-creditor situation.

THE COURT: That may be, but --

MR. FELDSHUH: You see, it is a matter of control, your Honor. It is a matter of control. At no point in time could Teledyne, let us assume, be a beneficiary of a trust, as your Honor would seem to imply. Suppose Teledyne walked into the Bank of America with no invoice,nothing, and said, "Give me my money," just like that, "I'm the beneficiary." The Bank of America could not without more recognize that beneficial interest.

THE COURT: That is nonsense. If I establish a trust for money for you to be paid upon your showing certain documents, you can't get that money until you show the documents. That doesn't have anything to do with it.

MR. WEINBERGER: May I also be heard on that, your Honor?

MR. FELDSHUH: Unless Eon will consent.

MR. WEINBERGER: May I also make one other comment that I wasn't allowed to complete? A trust relationship was inconsistent with the facts here because there was an intermingling of moneys at any given time between moneys that were --

THE COURT: That is not inconsistent with a trust relationship.

MR. WEINBERGER: There is no one indicia that I could point to and say that in and of itself is going to dispel this Court's view as to whether or not a trust relationship existed. The fact remains that there was no written understanding of having a trust relationship explicitly.

THE COURT: I will certainly agree that I had been the lawyer for the plaintiff this would have been done in an entirely different fashion.

MR. WEINBERGER: We all agree.

THE COURT: That is not the issue.

MR. WEINBERGER: Exactly. I am pointing out that aside from the fact of the relationship of the parties, which I think we should all recognize from the documentation --

THE COURT: We have gotten away from my first question: does anybody think that this plaintiff -- I can't see any value to the plaintiff in this arrangement unless there is some sort of a trust relationship.

MR. WEINBERGER: If Mr. Rouse's testimony is taken on its full face saying that he trusted these people as gentlemen --

THE COURT: He made a bad mistake.

MR. WEINBERGER: Very well, your Honor.

At some point,then, what he is really saying, what was really the issue here is not whether or not he wanted protection, because if he wants protection then he is not really trustingpeople, but what was that issue here, and that is what was clearly told to the people -- it is,I admit,with hindsight that I am trying to evaluate businessmen -- what was that issue was that American Marc in good faith let Teledyne know, because in fact Teledyne knew from their own D & B, that this is a phony company; at least that division is liquidating. They are having financial problems out in California and they are going to be disposing of their activities to the extent that they sell off inventory at 25 per cent off of its full value.

The point that is being made here, your Honor, is this: that they knew that in order to take on this contract and perform, manufacture the generator set, American Marc could not, as any ordinary purchaser, pay them in 30 days.

Now Mr. Rouse's testimony to the contrary notwithstanding, your Honor, I think that it strains the credibility to assume that it was their understanding that they were going to get paid in 30 days, and I will submit, your Honor, that the documentary evidence thatwill come out further in the trial will dispel that.

What American Marc was saying was, "We cannot pay you until we get the payments from the government because we need that money to pay you."

THE COURT: That is clear.

MR. WEINBERGER: And what was done here was an arrangement to overcome the 30-day period. They did not -- what they said is: We will show you that we are complying with this arrangement as we are going to take the money and we are going to deposit it directly to the bank." We will then issue from that bank to you a check. The sum of that check will be your invoices to us, which was used to obtain the money from the government. That is what you are entitled to, and we give you the bank to supervise this, and this is exactly what the comptroller of American Marc testified, your Honor, that they did and honored in every respect that each time money came in they took the underlying invoices and sent that to the bank, I believe, your Honor, so that the bank could -- with an instruction from the bank to pay Teledyne directly the value of that combined composite of checks.

THE COURT: If they kept on doing that there would have been no lawsuit.

MR. WEINBERGER: I would suggest, your Honor, that at some point in time certain events took place that

will have to come out in this trial, and I must submit, your Honor, that the first event --

THE COURT: Let me interrupt. What you just told me, the arrangement that you say that they made, sounds to me like a trust. I don't see what else. If I had never heard anything about it and you came into my office and said: I tell you what I'm going to do. I'm going to make an arrangement where I will send the money to the bank and the bank will immediately supervise and send out your share of it. I would assume that the bank was the trustee.

MR. WEINBERGER: The bank, but not American Marc.

What I am saying, your Honor, is that if American Marc was the trustee, then they had no business to certify documents to the bank. All they had to do was say: American Marc will act as the trustee. You will send us the appropriate amount of money when you get a check in from the government. You make your computations at your own office and send us what we are entitled to. But they didn't do that, your Honor.

THE COURT: I don't see any value in this arrangement, unless the bank had to pay the money.

MR. WEINBERGER: The value is this: in the broadest brush it is of no value to Teledyne, your Honor,

because it goes beyond the normal trade terms. In other words, they were anxious to obtain a contract and there was a businessman's arrangement.

How are we going to get paid? Because we will not be getting paid in 30 days, which is what they would love to have, if not earlier. And American Marc says that if no matter how much we would love to do it, we cannot pay you in normal trade terms because your sole ability to pay --

THE COURT: But what we will do is pay the bank and instruct the bank immediately to pay you.

MR. WEINBERGER: Your Honor, what they said was this: We will show you that each time we get a payment from the government we will document the underlying invoice from Teledyne and match it up with this payment from the government, and may I suggest, your Honor, to keep in mind, if I may,that the payment to the government is a progress payment that is related not to the salesprice of the generator to the government,it is related, your Honor, to the cost to American Marc.

I set that out in my letter to Judge Bauman. There is a difference. So that when a progress payment came in from the government,your Honor, it was related to the cost to American Marc verified by the government

of a Teledyne invoice, and it was that agreement that they apparently had that when we get paid from the government a progress payment it necessarily must cover invoices that we received from Teledyne and when we get that payment we will match that payment up with whatever invoices we received from Teledyne that supported the payment from the government and which was the basis for the government to make that particular progress payment and pay that money.

THE COURT: All right, maybe when the case is over you'll win.

MR. FELDSHUH: Your Honor, they could not novate this contract.

THE COURT: They could have, but they didn't want to.

MR. FELDSHUH: American Marc wouldn't do it.

THE COURT: Yes.

MR. FELDSHUH: So Teledyne had a choice, either do it that way, American Marc's way, or don't do it at all.

THE COURT: Right.

MR. FELDSHUH: They asked and couldn't get it. Now, what is the American Marc way? It is: We are not going to establish a trust account. We are not going to give you a letter which says we are trustees. With

regard to any funds received from the government the most we will do for you is to tell you, at your suggestion -- remember Mr. Rouse's testimony? He suggested the special account. He says, You fellows do it this way and I'm satisfied. I know you are in lousy financial shape, but do it this way and we'll have a deal.

So what does he say? He says: You open up a special account and when your money comes in you tell the bank to give us a cashier's check so we don't have to worry about the check clearing once we get it. That is it.

So what happens? American Marc under those circumstances is the debtor of Teledyne. Teledyne is a creditor. He said: You owe us so much money. You went ahead and you didn't do what you said you were going to do, namely, give the instruction.

THE COURT: And they did give the instruction.

MR. FELDSHUH: But they did originally. Up to the point where they kept giving the instruction, fine, but this was the deal that was determined and Teledyne had a choice to either take it this way or not at all.

The purport of Anderson's comment: Here you are talking about a trust. Anderson down the road and in this Modification No. 9 says, in effect: Forget about the money coming in and when it clears and this and that

he wants you to pay in a 30-day period from invoice. We don't care whether you get money, you don't get money or you stand on your heads. Just do it this way.

American Marc says -- this is Anderson's letter: Wait a minute. We told you before what we could do and this is it. We are not going to take the deal. You are changing the deal. It's as simple as all that. This was the deal that Teledyne had to make. Otherwise there is no subcontract. That is all.

To create out of their concept a fiduciary, I respectfully submit is going a little bit far. That is the whole story. That is our argument, your Honor.

You see, they are penetrating the corporate veil here and they are trying to do it on the trust theory that if, for example, they came in and they said to me, Listen, American Marc, you fellows violated your agreement and I said: All right, we violated it. You are a creditor. We didn't pay you. Prove your claim. Forever it is proved there is no contest.

American Marc doesn't say that we don't owe you the money. We owe you the money.

THE COURT: They haven't got it, so it is immaterial.

MR. FELDSHUH: Right, they haven't got it.

So now Teledyne comes in and says: Okay, fellows, you haven't got it. Now we are going to pierce the corporate veil and we are going to say that you gave us something which in fact we didn't get. That is the whole story.

THE COURT: I still don't see what they gained by this. Maybe you can make it clear.

MR. MITCHELL: I hope by my silence I am not being construed as adopting the statements made by Mr. Feldshuh and Mr. Weinberger.

THE COURT: Can you finish this witness by 4.30?

MR. FELDSHUH: I doubt it.

THE COUPT: I think you can. Get on with your cross-examination and stop wasting time.

MR. FELDSHUH: May I have a drink of water?

THE COURT: I can't say I have been patient but I will say I've tried to be.

MR. FELDSHUH: Please mark this for identification.

(Defendants' Exhibit D marked for identification.)

BY MR. FELDSHUH:

Q Mr. Rouse, I believe you testified that you met with Mr. Leonard, Mr. Coleman and Mr. Anderson in Walterboro some time at the end of November, the beginning of December,

1971?

A I am a little confused as to the exact time frame. I thought it was the end of October, some time in November. It was prior to making the first delivery of the unit, so it was somewhere in that area, October, November.

Q And the purpose of that visit was Mr. Leonard's complaint about Teledyne not being ready to make deliveries? Do you recall that?

A The reason for the meeting was to review the start-up status and the beginning of the first deliveries, because we had been affected some because of late delivery of inventory from American Marc.

Q Were there occasions subsequent to this meeting that you were in touch with Mr. Leonard?

A To the best of my recollection there was a meeting, one other meeting, and I can't remember exactly when it was.

Q Did that also have to do with the delivery schedule of the generator sets?

A I just can't remember the content of that meeting at all.

Q At the time that you met with them on this so-called second meeting, after the end of the October-November

meeting, was Mr. Leonard still an employee of American Marc?

A I think it was in the time frame or some time towards the end of 1971. I assume he was, yes. He represented himself as still the vice-president and general manager of American Marc - Eo-

Q I show you this paper and I ask you, sir, is that your signature?

A That is right.

Q This, sir, is the stationery of Continental Motors?

A Yes.

MR. FELDSHUH: I offer it.

MR. MITCHELL: I have no problem on authentication. I do have a problem of relevance. I don't see how that document is relevant at all. It involves something entirely apart from the 1.5 generator set that is now under discussion.

MR. FELDSHUH: It is a contract for the generator set now under discussion.

THE COURT: I will receive it.

MR. FELDSHUH: It talks about the 1.5 generator sets.

THE COURT: If it is not relevant, I won't consider

it.

(Defendants' Exhibit D received in evidence.)

Q Read that letter, please.

A Okay.

Q This letter is dated September 10, 1971; is that right?

A That's right.

Q And at that time you knew that Mr. Leonard was vice-president and a director of Eon?

A That is right.

MR. FELDSHUH: No further questions.

THE COURT: Are you through with your cross-examination? You managed to finish quickly.

MR. FELDSHUH: I will leave the exhibit with you.

MR. MITCHELL: I might just ask a question or two now, your Honor, but I would like to have a little time to collect my thoughts on redirect in light of the extensive cross-examination.

THE COURT: If you can save more than 20 minutes by going over to tomorrow morning, please do it.

There is no point in compelling him to go ahead for 20 minutes if he is just going to spin wheels.

cp20 Rouse

MR. MITCHELL: Thank you, sir.

MR. FELDSHUH: I am finished with this witness, unless something comes out. Are you going to have redirect?

MR. MITCHELL: Yes, I intend to.

THE COURT: Have you got another witness you can start with?

MR. MITCHELL: I have Mr. Coleman. I could start on him. I feel that is going to be as extensive as Mr. Rouse's. I can certainly start some of the background questioning now and perhaps get that out of the way.

THE COURT: Why don't you do that. Get your background questioning out of the way and then we will suspend and continue with Mr. Rouse's redirect tomorrow morning.

Any objection to that procedure?

MR. FELDSHUH: No.

THE COURT: You may step down.

(Witness excused.)

MR. MITCHELL: I now call Mr. Homer Coleman.

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HOMER FREDERIC COLEMAN, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MITCHELL:

Q Would you state your present address, Mr. Coleman?

A 1102 West Mill Road, Evansville, Indiana.

Q Would you briefly summarize your education, dates of graduation, and so on?

A Well, I attended high school in Illinois, Hearst, Illinois, and also finished in Evansville, Indiana. I attended special college courses in Evansville at Evansville University and at City College in San Diego, California.

Q Did there come a time, Mr. Coleman, when you were an employee of Teledyne Continental Motors?

A Yes.

THE COURT: I take it you got no degrees in college?

THE WITNESS: No, sir.

Q What was the date of your first employment with Teledyne Continental Motors?

A My first date of employment was with the Ryan

Aeronautical Company in 1956. That was a part of Teledyne later on.

Q Prior to Ryan Aeronautical, what other full-time jobs did you hold?

A I was an employee of Servel, Incorporated, in Evansville, Indiana, for seven years.

Q What was your position at Servel?

A Various positions ranging from a welder to an assistant on special assignments to the factory manager.

Q Are you presently an employee of Teledyne Continental Motors?

A No, sir.

Q At what time did you terminate with Teledyne Continental Motors?

A I believe it was in around -- in November of 1972.

Q Where are you presently employed?

A Could I make a correction? I believe it was in February, 1973.

Q Where are you now employed?

A With Hahn, Incorporated, in Evansville, Indiana.

THE COURT: Is there any relationship between Hahn and the plaintiff in this case?

THE WITNESS: No, sir.

Q So you were employed at Teledyne Continental Motors in May of 1971; is that correct?

A Yes.

Q What position did you hold at this time?

A Plant manager of the Walterboro Division, Walterboro, South Carolina.

Q In general, what were your duties and responsibilities in your position you had as plant manager?

A I was in charge of all production manufacturing and all other operations at the Walterboro facility except finance.

Q What in general were the product lines manufactured at the Walterboro plant in early 1971, say, January of 1971, if you can recollect?

A We were producing component parts for combustion engines. We were producing 300 amp DC generators for military engines. We were producing a 4.2 DC generator set for Food Machinery Corporation, and we were producing gaskets for both military and civilian use.

Q Looking at the entire product lines at this period, what was the approximate breakdown between the U.S. Government and commercial business at the time in the Walterboro Division?

A If I recall correctly, it was somewhere between

50/50 or 60/40, in that neighborhood.

THE COURT: Which is 60 and which is 40?

THE WITNESS: The 60 being civilian and 40 per cent being government.

THE COURT: What was the occasion for your leaving Teledyne?

THE WITNESS: I was transferred to staff, Mr. Richardson's staff in Detroit, and then later mutually agreed that I would go back to Indiana.

THE COURT: You mean you left, you changed employment because of the location?

THE WITNESS: Well, I went back from South Carolina to Evansville,Indiana, and after mutually agreeing to leave my employment with Teledyne.

THE COURT: Was there dissatisfaction either way?

THE WITNESS: Not on my part, and I don't think on Mr. Richardson's part, no.

Q During May, 1971, to whom did you report as plant manager?

A To Mr. Douse.

Q And who reported to you as plant manager?

A Oh, all supervisory personnel and hourly personnel at the Walterboro Division plant with the exception

of the finance people.

Q Where did the finance people report?

A We had some finance people at our plant reporting to the Michigan, Muskegon, Michigan, plant.

Q Did there come a time when you first heard of a possible subcontract of 1.5 kilowatt generator sets in 1971?

A Yes.

Q How did you first have knowledge of this?

A I received a telephone call from Mr. Rouse.

Q Could you pinpoint the day?

A On Friday, May 7, I believe. He told me he had received a telephone call about the possibilities of subcontracting a 1.5 generator set and wanted to know if I thought we should pursue it, to which I said yes.

Q Was this the basic sum and substance of that telephone conversation?

A Well,he said he had had a telephone call from Mr. Enderle telling him that Mr. Enderle had received a telephone call from a Mr. Walper in Los Angeles.

Q Mr. Gene Walper?

A Yes.

Q At the time of the telephone conversation with Mr. Rouse, were you aware of the name of the company

from which there was a possibility of subcontracting?

A No, sir.

Q Did you make any arrangements with Mr. Rouse with regard to further exploration of the subcontracting possibility?

A Yes, I talked to Mr. Rouse again on Saturday and we made arrangements, I made arrangements or he made arrangements for us to meet in Los Angeles on Sunday.

Q Did you in fact subsequently meet in Los Angeles on Sunday?

A Yes, we met on Sunday and stayed at the International Hotel in Los Angeles.

Q Did you have any meeting with a proposed company for a subcontract subsequent to that?

A We had a meeting on Monday morning with a Mr. Walper for breakfast.

Q Where was that meeting?

A At the International Hotel in Los Angeles.

Q Who participated at this meeting?

A At the breakfast meeting Mr. Rouse and myself and Mr. Walper met and later in the morning Mr. Jim Leonard joined us, was introduced as Mr. Jim Leonard, vice-president and general manager of American Marc Division of Eon Corporation.

Q What else did Mr. Leonard say at the meeting concerning the possibility of subcontracting, and this is the breakfast meeting?

THE COURT: Leonard wasn't there.

THE WITNESS: He arrived while we were waiting, just as we were finishing he arrived.

THE COURT: Why don't you complete the breakfast meeting and then we will adjourn.

Q Was anything stated concerning the possibility of subcontracting at the breakfast meeting at which Mr. Walper and Mr. Leonard were present, Mr. Leonard having come subsequently?

A Mr. Leonard told us that they had a 1.5 contract -- that American Marc had a 1.5 contract that they were interested in subcontracting to someone to finish for them, so that they could complete a transaction for a closing of the American Marc Building that they had there because that was the only contract they had in it, and they would like to sub it out so that they could close that plant.

THE COURT: Was anything said about paying Mr. Walper?

Q At this meeting was anything said about paying Mr. Walper a finder's fee, that is, the breakfast at which Mr. Leonard was present subsequently?

A I don't recall if we mentioned that at that particular meeting or not. It was my understanding that there probably would be a finder's fee paid to Mr. Walper.

Q Was this stated out of Mr. Leonard's presence by Mr. Walper or by Mr. Rouse prior to Mr. Leonard arriving? Was there any discussion on this topic?

A I just can't recall at that particular meeting whether there was anything stated or not.

THE COURT: Would it refresh your recollection that the testimony has been that Mr. Walper had said that he wouldn't identify the proposed prime contractor until his finder's fee had been agreed upon; do you remember anything of that nature?

THE WITNESS: If my memory serves me correctly, Mr. Rouse had told me over the telephone that we probably would have to pay a finder's fee to Mr. Walper if we got the contract.

THE COURT: But you have no recollection of discussing it with Mr. Walper?

THE WITNESS: No, sir, I don't.

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Q At the time that -- during the breakfast meeting prior to the arrival of Mr. Leonard, was Mr. Leonard's name given to you by Mr. Walper or the name of American Marc or the name of Eon Corporation? Were those specific names mentioned to you?

A During the breakfast meeting?

Q Prior to Mr. Leonard's arrival, yes.

A He told us that he would introduce us to the gentleman that we were going to be discussing this contract with or this subcontract with and I believe he called him by name but not the company.

Q And was it in fact Mr. Walper that introduced Mr. Leonard when Mr. Leonard arrived or did Mr. Leonard state who he was?

A Mr. Walper introduced him.

Q Again, during the breakfast meeting after the time Mr. Leonard arrived, was the nature of the item to be subcontracted discussed? Was it described?

A It was described as a 1.5 generator set.

Q And did you state to Mr. Leonard, you or Mr. Rouse state to Mr. Leonard or did Mr. Leonard state to you the fact that Teledyne had bid on a similar 1.5 kilowatt generator set at an earlier date?

A The subject was discussed about the prior

bidding of 1.5 generator sets. Just how it came about, I can't recall.

Q And had in fact Teledyne Continental Motors bid on a 1.5 kilowatt generator set prior to this breakfast meeting?

A Yes, we had bid on approximately 2300 1.5 generator sets in March of 1971.

Q And in the course of preparing that bid, had you or to your knowledge anyone else at Teledyne tried to approximate the costs of producing generator sets pursuant to that, I guess it is an IFB?

A Yes, I had the contract administration people work up a proposal for bid and I reviewed it, worked with the contract people to establish the bid price on that particular IFB.

Q What was the approximate date that you worked up a bid price for the IFB? How far prior to the date of this breakfast meeting?

A It was in March of '71.

Q Had Mr. Rouse stated to you any reason why you were coming along with him to meet this prospective prime contractor?

A I was coming with him to assist him in any way, having been familiar with the product itself and the nature

that we had just bid the -- worked up the bid package on it in March.

Q To the best of your recollection was any other subject discussed at the breakfast meeting in Mr. Leonard's presnce prior to the termination of that meeting?

A Mr. Leonard, if I recall correctly, gave us a run-down on American Marc being a division of Eon, a New York company, and that he was the vice president and general manager of American Marc and a director of, on the board of directors of Eon Corporation priot to finishing that meeting.

Q Did he state to you why American Marc was interested in finding a subcontractor?

A Yes.

He said that they had the big building or the big plant in Los Angeles and they only had the 1.5 contract left in it since they had terminated a diesel engine that they were making and that the 1.5 could not support the overhead of that particular facility and they wanted to sub the contract out.

Q After the breakfast meeting --

THE COURT: Why don't we stop now. And you were going to give me this administrative ruling?

MR. FELDSHUH: I think that may have come in that

envelope. I didn't have a chance to look at it. It was handed to me when I went out to get a drink of water. I will take a look and see. If not, I will get it to you the first thing in the morning.

THE COURT: Otherwise, I will see you at 9:30 tomorrow morning.

MR. FELDSHUH: Your Honor, could I ask your indulgence to make that 10 o'clock for the reason that I travel from up in Westchester and the trains are invariably late. Even though I schedule, for example, the first day we had that 9:30 I was set to arrive in New York at a quarter to nine. I arrived in New York a quarter after 9 and I broke my back getting down here. Otherwise I would be very pleased to make it at 9:30 but I can't tell about those trains.

THE COURT: Okay, 10 o'clock.

(Adjourned to Wednesday, July 17, 1974, at 10:00 o'clock a.m.)

TELEDYNE INDUSTRIES, INC.,
Plaintiff,
vs.
EON CORP., ODIF PODELL, SIMON SRYBNIK, NICHOLAS ANTON, SAUL WALLER and KERNS MANUFACTURING CORP.,
Defendants.

72 Civ. 3261

New York, July 17, 1974;
10.10 A.M.

Trial resumed.

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THE COURT: At the outset I will say that I have gone over this contingent fee bulletin you gave me, addressing the defendant, and unless you show me cases that hold otherwise I will rule that it has nothing to do with this lawsuit.

As I read this bulletin it relates only to soliciting contracts from the Department of Defense. Its purpose is to prevent undue influence upon employees or officers of the United States, and that is not involved in this case.

MR. FELDSHUH: Your Honor, in the purchase order itself, paragraph H, this language was adopted.

THE COURT: I understand that. That is a question of contract.

MR. FELDSHUH: In addition to that, may it please

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the Court, the words and pertinent provisions of the prime contract were incorporated in this purchase order agreement.

THE COURT: I understand all that. In order to protect your record you will recollect that I allowed your motion to amend the answer.

MR. FELDSHUH: Yes.

THE COURT: I now strike that affirmative defense as insufficient in law.

MR. FELDSHUH: May I point certain things out for your Honor for the record?

THE COURT: Yes.

MR. FELDSHUH: Insofar as the regulations now referring to the Armed Service Procurement Regulation, a copy of which I furnished to your Honor yesterday, at page 127, your Honor -- if your Honor will look at the top you will find those page numbers -- and if your Honor will look down at Section 1-503.3, at the bottom of the page --

THE COURT: Misrepresentation.

MR. FELDSHUH: Right.

This provision, if your Honor please, gives the sense and meaning of the posture of receiving a contingent fee in connection with a government contract. As a matter of fact, on page 128, Subdivision Item IV, it would be for

the government to consider referring the case to the Department of Justice. That is apart from all other things that the government might do.

In addition to that, as I pointed out a moment ago,the provisions of the prime contract as well as the rules and regulations pertinent thereto are adopted and incorporated within the purchase order as though set out at length.

Finally, may it please the Court, it is our sense that this whole area of contingent fees was infused even into a kind of subcontract such as we have here so long as the material was going to go to the government and the government was going to pay a sum of money, part of which would be devoted to the payment of a contingent fee,and upon that basis, may it please the Court, we claim that aura of prohibition or even that sense of fraud was so serious that in this case there was no disclosure to the government that there was this very open and notorious contingent fee arrangement; that Teledyne as a prior contractor in relation to the government and having secured government contracts is charged with knowledge and notice of these provisions with respect to the Armed Services Procurement Regulations.

Upon all of those grou[illegible] may it please the

Court,we state that it is a good affirmative defense here, one which the Court of its own motion must take cognizance of.

Your Honor,I take it by your denial of our motion for leave to amend --

THE COURT: I granted your motion.

MR. FELDSHUH: You granted it and now you are striking the defense as a matter of law.

THE COURT: That is to protect your record.

MR. FELDSHUH: Thank you very much. I respectfully except to your Honor's ruling.

THE COURT: I may be in error but I'm not in doubt. However,it is open to you if you think you can prove that the defendant corporation or the non-defendant corporation and the individual defendants -- first the non-defendant corporation was unaware of this fee and therefore it was a violation of its contract.

MR. FELDSHUH: Right.

THE COURT: If you prove that, why, I will consider what result flows from that.

MR. FELDSHUH: May I respectfully ask the Court for one further indulgence, although I know that your Honor has reached a decision on this now? May we have the opportunity,your Honor, at the end of the entire case to

submit appropriate authority to you by way of decisions and perhaps,your Honor --

THE COURT: It seems to me you must have gotten authorities by this time and I think that the plaintiff is entitled to know what issues are involved in this case, and I think I went to a considerable extent permitting an amendment at this late date over the plaintiff's claim of surprise,and if you haven't got your authorities by now I think you better save them for the Court of Appeals.

MR. FELDSHUH: What I thought, sir, was that we would formalize the presentation.

THE COURT: The presentation is as formal as you need it. You have a record, and obviously if you can by any way,shape or manner persuade me that I'm wrong, I would rather correct it now than get reversed, so with that caveat we will proceed on with the rest of the case.

MR. FELDSHUH: Very well, sir.

MR. MITCHELL: Mr. Feldshuh, you were going to supply me with a copy of that regulation.

MR.FELDSHUH: Yes.

May the record reflect that I have provided a copy of the regulations to Mr. Mitchell.

H A R O L D W A Y N E R O U S E resumed.

REDIRECT EXAMINATION

BY MR. MITCHELL:

Q Mr. Rouse, yesterday --

MR. FELDSHUH: Just one second. I see Mr. Coleman is still in the courtroom.

THE COURT: Mr. Coleman, we will isolate you.

Q Mr. Rouse, yesterday you were asked some questions on cross-examination concerning three documents-- your daytimers, Plaintiff's 1 in evidence, your notes, whichare Plaintiff's 2 in evidence and your letter of May 13 to Mr. Leonard which is Plaintiff's Exhibit 6 in evidence. And you were asked as to the reason for the omission of certain language between or that appeared on Exhibit 1 and 2, on the one hand, and your letter of May 13, on the other hand.

Could you state for the record, Mr. Rouse, the causes for the omissions of that language?

A What do you have reference to? What words are missing?

Q Well, to review the questioning yesterday, I show you Plaintiff's Exhibit 1 in evidence, the page which bears the date Wednesday, May 12, and there are some crossed out lines toward the bottom. I believe you

read yesterday your handwriting stating "with Bank of America to pay us first." Do you see that writing on that page?

A Yes, I do.

Q I will show you Plaintiff's Exhibit 2 in evidence in which the language "before anyone else" appears in your paragraph numbered 1. Do you see that language?

A Yes, I do.

THE COURT: The point of his question is that neither of those expressions appear in your letter of the 13th?

MR. MITCHELL: That's correct, Plaintiff's Exhibit 6 for identification.

THE COURT: He wants to know why not.

Q I will show the wintess Plaintiff's Exhibit 6 and refer you to paragraph No. 1 on thatexhibit.

A It was simply an omission when I wrote the letter. When I stated here "which will be used to pay TCM invoices" it means the same thing to me as what I previously read.

Q Between the time that you left Los Angeles on May 12 and the time you wrote this letter, Plaintiff's Exhibit 6, which you earlier testified was written

on the 13th, had you had any communications with anyone, any representative of Eon, Mr. Leonard or Mr. Anton concerning the language of an agreement regarding a special bank account?

A No.

Q On the Plaintiff's Exhibit 1, the scratched out portion which I just showed you, do you recall when you made that crossout?

A As I testified, I think it was yesterday, as I completed those items or did something with them I marked them out.

Q Can you state a date in which, to the best of your recollection you made that markout?

A On the one you had in reference about the special account, to the best of my recollection it was on the date that I wrote the letter on May 13th.

THE COURT: Actually, am I correct, that is not your recollection, that is what you assume must have happened?

THE WITNESS: Yes, that's right.

THE COURT: I assume you have no recollection of actually crossing that out?

THE WITNESS: No, I assume that is what happened.

Q Is the basis of your statements, Mr. Rouse, your normal practice or your specific recollection?

A It's my normal practice on the majority of the items that I will mark them out whenever I take specific action on them.

THE COURT: The point I am making is you are just reconstructing it, you have no recollection one way or the other?

THE WITNESS: Yes, sir.

Q You also testified yesterday, Mr. Rouse, concerning the use of residual funds that the American Marc division of Eon would have from the Army or from the government payments. Can you state what your understanding of residual funds was in the context of the questions you were asked yesterday?

MR. FELDSHUH: Objection, your Honor. It is improper redirect. The words speak for themselves.

THE COURT: You questioned about his understanding, so why shouldn't he?

MR. MITCHELL: Your Honor, I don't have the transcript of yesterday, so I have to summarize to the best of my recollection.

THE COURT: Objection overruled.

A The residual funds would be that amount of

money -- let me say it another way. The government would pay by check, it would go into the special account. Teledyne would invoice. The difference between the amount of the invoice and the amount the government had paid would be the residual funds by my interpretation.

Q Now, was it your understanding that at the time these funds would have been received from the government, Teledyne would have known how much residual funds there would have been from any particular government payment?

A No.

MR. FELDSHUH: May I have that question and answer, please?

THE COURT: The question was each time there was a payment there was some residual funds. Would Teledyne know the amount of that fund? He said no.

Q Without instructions from American Marc division of Eon was it your understanding that the Bank of America would have known how much of the funds received from the government constituted these residual funds?

A No.

Q Who would in your understanding have known how much these residual funds were?

A American Marc.

Q In the course of your discussions during the period May 10th through May 12th with Mr. Leonard and also during the course of your discussions on May 12th in which Mr. Anton was present, was the subject of the preventing of an attachment of funds by setting up a special bank account discussed?

A No.

Q Would you have accepted on behalf of Teledyne Continental Motor a special account arrangement which did nothing but protect against the attachment by third party creditors of Eon or its American Marc division?

MR. FELDSHUH: Objection.

THE COURT: I don't think that is a contension that was made. As far as I remember his argument, this was supposed to make easier an attachment by you people. I don't quite follow how it did, but that was his argument.

MR. FELDSHUH: Right.

MR. MITCHELL: I misinterpreted his argument, your Honor. I thought it would hide the money in a different bank and prevent third party creditors from attempting --

THE COURT: I don't see why, but that was the argument.

MR. MITCHELL: I withdraw my last question, Mr. Rouse.

Q Just to summarize it, your statement is that the subject of attachment of the special bank accounts was not discussed at all during this period?

A The answer is it was not discussed.

Q You were also asked some questions yesterday, Mr. Rouse, from your deposition and on page 31 of your deposition --

MR. MITCHELL: This, by the way, I believe is Defendants' Exhibit B in evidence.

THE COURT: Is it C?

MR. WEINBERGER: B, your Honor.

THE COURT: What page?

MR. MITCHELL: Page 31, your Honor.

Q The appropriate portions that were read, Mr. Rouse, were on line 17 and following.

Reading line 17 through line 25, do you recall was that the occasion that you were answering with respect to the meeting at American Marc on the day of May 12 or the subsequent meeting in the lawyer's office, the office of the lawyers of American Marc

Division?

A This would have been at the office of the American Marc facility.

THE COURT: Is it correct Mr. Anton and Mr. Leonard went with you to the lawyers, but Mr. Coleman didn't?

THE WITNESS: That's right, sir.

Q Is it your testimony that you didn't leave a copy of your day timer, which is Plaintiff's Exhibit 1 in evidence, with either Mr. Leonard or Mr. Anton at that occasion?

A I didn't.

Q In fact, you never left a copy of your day timer at all, is that correct?

A That's correct.

Q Your testimony was, I believe, for the last two days that you did leave a copy of Plaintiff's Exhibit 2 for identification --

THE COURT: In evidence.

MR. MITCHELL: I'm sorry, Plaintiff's Exhibit 2 in evidence.

Q With Mr. Leonard at his request on May 12? Do you remember that?

MR. FELDSHUH: I don't remember it being

his request.

Q Mr. Leonard's request?

A I testified Mr. Leonard asked for a copy and he made a copy and kept it in the office.

THE COURT: He gave you back the original?

THE WITNESS: Your Honor, as I remember, I think I stated this earlire, I can't remember whether I left the original with him and took home a copy or vice versa.

THE COURT: Whatever you took home --

THE WITNESS: Yes.

THE COURT: But you do remember taking it home?

THE WITNESS: Yes, sir.

Q Mr. Rouse, you were also questioned on cross-examination with regard to the bottom of page 38 and the top of page 39 of your deposition, reference was made to the three major points which appear on a page of your daytime memorandum, which is Plaintiff's Exhibit 1. And you were asked on page 39:

"Q Is it also the fact that they didn't represent talks with Mr. Anton?

"A That's right."

A May I see the page you are talking about, the daytime, please?

Q The page is the page that indicates, I believe, major points at the top.

A Page 11, Tuesday.

THE COURT: What's the date?

MR. MITCHELL: May 11th, the day is at the top of the page.

A And the question again, please?

Q Well, first of all, was it -- is it your testimony that your handwriting on a certain date in your day timer encompasses discussions held on that particular date? In other words, if anything appeared on May 11 in your day timer and the page is May 11 would it of necessity have to have taken place on May 11?

A No.

Q Isn't it a fact you used this, more or less, as a notebook as opposed to an actual calendar of the dates when certain occurrences took place?

A That's right.

THE COURT: I suppose in general you tried to use the dates?

THE WITNESS: That's right, sir.

Q Referring to the page indicated on the date of May 11 with the heading of "Major points," did you physically write this writing in your day timer before

or after you talked with Mr. Anton on May 12?

A Before.

Q So as a consequence, the writing on page designated May 11 could not have recorded any conversation you had with Mr. Anton; is that correct?

MR. FELDSHUH: Objection.

THE COURT: Well, obviously.

MR. FELDSHUH: That is the inference that your Honor must draw and not counsel.

THE COURT: Objection sustained.

Q Is it a fact, Mr. Rouse, that in your testimony from the deposition, which I just referred you to, you were referring to the fact that the major points were not taken down at the meeting with Mr. Anton, but were rather referred to and covered subsequently at that meeting with Mr. Anton?

MR. FELDSHUH: Your Honor, I object to this form of interrogation. Counsel is testifying. All he is prompting here is a yes or no answer.

MR. MITCHELL: On cross-examination an attempt was made to impeach Mr. Rouse by the statement from his deposition he didn't write down a record of his discussions with Mr. Anton which is correct. All he testified to in his deposition, which I am trying to

bring out, is that he later subsequently covered these in his conversation with Mr. Anton. But that is not the question he was asked on his deposition.

THE COURT: I will allow it.

MR. FELDSHUH: I think your Honor has the deposition in front of you and your Honor can determine the scope of the question.

A As I stated I think earlier, I reviewed all these points in the precence of Mr. Anton, Mr. Leonard and Mr. Coleman.

Q You also referred, Mr. Rouse, on page 62 of your deposition, line 13 and the following -- would you refer to thatportion of your deposition?

A Yes, I have it.

Q You were there asked the following question:'

"Q Mr. Rouse, was there any other person connected with Eon or American Marc with whom you communicated on an executive level in relation to this contract, the subcontract, other than Mr. Leonard?

"A No one."

Did you intend, Mr. Rouse, to indicate that you had not had a meeting with Mr. Anton on May 12 when you answered "No one"?

MR. FELDSHUH: Objection.

THE COURT: Overruled.

A The answer is no.

Q Were you not in fact referring to a folder of written communications which the page, page 62 and preceding page 61 of the deposition referred to?

MR. FELDSHUH: Objection.

Q When you used the word -- when you understood the question, "with whom you communicated at an executive level," did you interpret communicated to be written communication in reference to the prior Exhibit 1 which was a folder of 22 documents from your files?

A That is right.

MR. FELDSHUH: I object and move to strike the answer, your Honor.

THE COURT: Overruled. This is redirect. It is not binding. It's his view of what that testimony means. Obviously it's not binding on me.

MR. FELDSHUH: Your Honor, I can't see that counsel's interpretation is necessarily that of the witness.

THE COURT: He can say so. Obviously it would have more effect if counsel didn't ask leading questions. It's a conclusion I came to from reading the testimony myself.

MR. FELDSHUH: Your Honor, I respectfully submit that irrespective of what your Honor's conclusions may have been, the posture of these questions is such as to be certainly definitely improper in form and certainly leading and from the point of view of their contention they may reconfirm in your Honor's mind something your Honor previously arrived at, but they are statements of counsel and not statement of this witness.

THE COURT: I understand that.

MR. FELDSHUH: I think the practive is bad.

THE COURT: If there were a jury here that might be important, but obviously he asked the question "What did you mean" and if he came up with that answer that would be more effective. And if this were an important issue --

MR. FELDSHUH: Sorry, sir, to me the posture of the questioning, be it a jury or non-jury case, should be competently done.

THE COURT: That is what you are paid to do and I am paid to rule.

MR. FELDSHUH: All right.

MR. MITCHELL: I have no further questions on redirect, your Honor.

RECROSS EXAMINATION

BY MR. FELDSHUH:

Q Mr. Rouse, it is the fact, sir, that you did sign Defendants' Exhibit B in evidence and swore to the truth of the statements therein contained on November 30, 1972?

A That's right.

THE COURT: "That's right," that is the answer. Don't go any further.

Q Upon the occasion of your swearing to the truth of these statements, you had read this Defendants' Exhibit B in evidence, is that right, sir?

A That's right.

Q Sir, it is the fact, is it not, that upon the occasion of your writing the May 13, 1971 letter you had either in front of you or in your mind, your daytimer Exhibit 1 and the memorandum, Exhibit 2; is that right, sir?

A I would say yes.

THE COURT: Again you have no recollection, but you are reconstructing the probatilities?

THE WITNESS: Yes.

MR. FELDSHUH: Your Honor, I take exception to your Honor's comment. This is a definite statement of a

witness.

THE COURT: I understand, but I am trying to understand what he meant by it. Laymen, you know, don't know the difference between recollection and reconstruction.

For example, if you asked me as a layman when I was born I would state on February 24, 1969, but I have absolutely no recollection of that event.

MR. FELDSHUH: That is true, sir, and neither do I.

THE COURT: If that is important I would want it on the record that I wasn't speaking from recollection but from reconstructing from hearsay. I am reasonably satisfied that this witness has no present recollection of doing these things, because I don't think he is zombie.

THE WITNESS: That's right, I agree.

THE COURT: I think he has a general recollection of the events and he sees the letter and figures that is how it happened. And I want to know if my impression is correct. If you disagree with me, feel free to say so.

THE WITNESS: No, I agree with you, sir.

THE COURT: You may say to me "Judge, that

may be your memory, but my memory is different."

MR. FELDSHUH: In that connection, may I point out to your Honor that in the course of the deposition which took place on September 12, 1972, there was no difficulty as to thiy witness' memory.

THE COURT: That's right. Laymen don't know the difference between when you ask them if something happened, if they think it happened because it probably did they say yes, it happened. That doesn't mean they recollect that it happened. I want to know which he is saying. I wasn't there during the deposition, thank God.

T3 Q I notice, sir, that with regard to those major points, Items 1, 2 and 3, as they appear on May 11 on Plaintiff's Exhibit 1 in evidence there is no strikeouts, sir. You didn't strike those items out?

A That is right.

Q You testified in response to Mr. Mitchell's questions that when you do something it was your practice to strike these things; is that right?

MR. MITCHELL: I object to that. That was not his testimony. His testimony was as to certain items of agenda, if there were things to do in the future, when he in fact did them in many cases he would strike them.

THE COURT: It was his normal practice to strike them. That is my recollection.

MR. FELDSHUH: That is what I thought I heard.

Q When you wrote the letter of May 13, 1971, you testified that that letter of May 13, 1971, incorporated the points discussed with Mr. Leonard between the period of May 10 and May 12; is that right?

A No.

Q Did they include points not discussed with Mr. Leonard?

A They covered the points that we had agreed on.

Q That is what I mean.

A Okay. Well, there is a difference.

THE COURT: You didn't cover everything that was discussed? Is that what you are saying?

THE WITNESS: That is right, sir.

Q Having written the letter, did those points, 1, 2 and 3, or were those points incorporated in the May 13 letter?

A In essence -- let's see. No, because these were statements of facts, sir.

Q So, therefore, it is the fact, is it not, having not incorporated those points in the May 13 letter, you did not use those points as a basis for writing the letter of May 13?

THE COURT: Which points are you referring to?

Q Referring to all points, 1, 2 and 3 on May 11, sir.

A The May 13 letter speaks for itself.

Q Yes, and the notes speak for themselves.

A But I can't give you a straight yes or no because there was some discussion in the letter about how we were going to handle the inventory and also about our buying the inventory.

Q With regard to Item 1, namely: "Eon refuses to novate the contract to TCM; wants to subcontract" --

A Yes.

Q -- you didn't have to incorporate that in your May 13th letter because that is what you did; isn't that right?

A Yes.

Q That is how you account for not incorporating that in the May 13th letter.

Now, Item 2: "There is enough money in contract in the 4350 units to satisfy TCM invoice per Leonard."

As you testified a moment ago, there is no mention of Item 2 in the May 13 letter at all; isn't that right,sir?

A That is right.

Q And there is no mention of that in the --

THE COURT: Exhibit 2, the memorandum?

Q In like manner, sir, there is no mention of "There is enough money in contract for the 4350 units to satisfy TCM invoices per Leonard"; there is no mention of that in the memorandum, being Exhibit 2 in evidence; is that correct?

A That is correct.

THE COURT: Why is that?

I suppose that is what you are asking. I suppose you are not wasting your time making him testify. Do you

have a question to ask?

MR. FELDSHUH: Yes. One further question, your Honor, that I would like to ask.

Q How do you account for the omission?

THE COURT: That is the question I asked him. Why is that?

THE WITNESS: Why did I omit it?

THE COURT: That is right. That is what he is driving at. Why did you omit it?

THE WITNESS: Because this was --

THE COURT: What is "this"?

Q "This," referring to the Daily-Timer?

A No, it is not. You asked me a question about Item No. 2. Is that what you are asking?

Q Yes.

A You are asking about Item No. 2: "Is there enough money" --

THE COURT: Yes. The question is why doesn't that item reflect itself in the letter or your memorandum? That is the question.

THE WITNESS: I saw no need to put it in there because this was a statement made to me and I covered how the money would be handled in my letter of May 13 by setting up the special bank account to hold the money that Teledyne

would own that would come to them, so there was no need to put something in there that we had agreed, that there was enough money in the contract.

Q On the occasion where you asked him that, did you ask him how much money?

A Yes. I think I testified to the fact that it was done twice, once on May 10th, following the review of the prime contract we talked about it. I asked him to novate the contract and he would not novate the contract. So then we saw the paragraph in there about progress payments. We asked him if there was money still remaining for the second year procurement and he said yes.

Q My question was, did you ask him how much?

A He said the full amount of the money for the second year procurement.

Q Did you know how much that was?

A No, sir. It would be impossible for me to know because I did not know what they were selling the units for to the United States Government.

Q Did you ask him?

A As I remember, I didn't exactly -- I didn't ask him the exact dollars to the best --

Q But you know what your dollars were because you multiplied by 360?

A No. At that time we had not negotiated the price of the units when we first reviewed the prime contract when this came up.

Q There came a point in time when you did fix the price; do you recall that?

A That is right.

Q At that particular time you did know the amount of your subcontract,the total amount of that, didn't you?

A That is right.

Q Did you ask Mr. Leonard again if there was enough money to cover the amount that you then knew to be the subcontract price?

A Following the discussion, my discussion with Mr. Leonard in regards to the D & B report late in the afternoon of the 10th, he said to me, he said, "I don't know why you are concerned about getting paid. All the money is remaining in the second year procurement," and I did not pursue the exact dollar amount,because that meant to me --

THE COURT: He asked you did you do it and you said no.

Q Try to answer my questions yes or no, if you can, please, without explanations.

Is there any notation with regard to: There is enough money in the contract for the 4350 units?

THE COURT: Don't ask him is there any notation. Point out that there is not and ask him why, if that is what you want to know.

MR. FELDSHUH: All I want to ask him, sir, is whether --

Q Did you get this information, the same information that you claim Leonard stated to you, from Mr.Anton?

A I did not.

THE COURT: Are you finished?

MR. FELDSHUH: No, I'm not. I am just putting down these exhibits.

May I have half a second, your Honor?

THE COURT: Yes.

(Pause.)

Q Mr. Rouse, with regard to the purchase order, my recollection of your testimony --

THE COURT: I don't remember anything on redirect about purchase order.

MR. FELDSHUH: I thought that counsel brought that up.

THE COURT: I don't recollect that.

MR. FELDSHUH: Mention of the purchase order?

MR. MITCHELL: I don't recollect that, Mr. Feldshuh.

MR. FELDSHUH. I think you are mistaken, sir, but of course your recollection is better than mine.

THE COURT: I have doubts about it.

MR. FELDSHUH: May I just for the record, then, just to protect the record, if it please the Court, merely state as an offer of proof that the proposed question was: When did Mr. Rouse receive the purchase order and where?

THE COURT: You can ask that question.

When did you receive the purchase order and where?

THE WITNESS: On the day of the 12th at the American Marc facility.

MR. FELDSHUH: Just one more question?

Q Was Mr. Anton present at the time you received the purchase order, when it was hand-delivered to you?

A To the best of my recollection, yes.

MR. FELDSHUH: That is it, your Honor.

THE COURT: Now, to illustrate that Mr. Feldshuh's advocacy is much better than I gave him credit for, he made by a series of what seemed to me stupid questions very much an impression on my mind that the change order incorporating the bank account was not signed. Do you propose to explain that?

MR. MITCHELL: I can explain it, your Honor.

THE COURT: By this witness?

MR. MITCHELL: Are you talking about Modification 9?

THE COURT: Yes.

MR. MITCHELL: We have a signed copy.

THE COURT: You are not going to do it by this witness?

MR. MITCHELL: No. The original copy in our file was unsigned. We have obtained a signed Xerox copy of a purchase order Modification No. 9 signed by Mr. Leonard, which may have been the one that accompanied his letter of October 11,which is in evidence.

THE COURT: You are not going to do it by this witness. You are going to do it through a more appropriate witness.

Is that all?

MR. MITCHELL: That is all.

THE COURT: Off the record.

(Discussion off the record.)

(Witness excused.)

MR. MITCHELL: I will call Mr. Coleman back to the stand.

HOMER F. COLEMAN, resumed, having been previously duly sworn, testified further as follows:

DIRECT EXAMINATION CONTINUED

BY MR. MITCHELL:

Q Mr. Coleman, if my recollection is correct, we ended offyesterday with a discussion of what occurred at the breakfast meeting on May 10, 1971. Did there come a time when the breakfast meeting that you testified to yesterday terminated?

A Yes.

Q What happened thereafter?

A Mr. Rouse and Mr. Walper and Mr. Leonard and myself went to the American Marc plant to have further discussions.

Q Whose office did you go to?

A We went into an office just adjacent to Mr. Leonard's.

Q Did there come a time when you took a plant tour?

A Yes. We had a discussion about the contract or the amount of units left in it and then we took a tour to see their manufacturing facility and their methods of manufacturing and the inventory that was there.

Q Approximately how long did the meeting in the

outer office take place before you went on the plant tour; how many minutes, if you can recollect?

A Oh, 30, 45 minutes,probably.

Q And to the best of your recollection what were the subjects discussed and what was the sum and substance of the conversations?

A At that particular point of time Mr. Leonard had acquainted to us their contract, the fact that it was a two-year procurement contract, and that they were almost at the end of the first year procurement; that there was a 250 piece add-on to the first year procurement, and that they had certain inventories that were in excess of the first year's procurement and that he was -- they were interested in subcontracting to someone the second year procurement,which was approximately 4300 units.

Q Was any discussion of price had in this particular meeting,the subcontract price?

A You mean prior to the plant tour?

Q That is right.

A I dont recall if the price came up at that particular time or not.

Q Approximately how long did the plant tour last?

A Oh, less than an hour, I'd say.

Q And thereafter did negotiations resume?

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A Yes.

Q Who was present at these negotiations?

A Mr. Rouse, myself, Mr. Walper, Mr. Leonard, at the start of the meeting.

Q How long did these negotiations last?

A They lasted until late in the afternoon on Monday and --

Q This would be May 10th?

A May 10th, yes, on Monday.

Q And during the course of these negotiations was any discussions had of the prime contract between American Marc and the United States Government?

A Yes, as I said, we talked about it being a two-year procurement contract, the total number of units that were remaining in the second year portion, the inventories.

Q Which inventories?

A The inventories that would be excess of the first year procurement.

And after the tour we then were talking about -- started negotiating what Teledyne would be willing to pay the American Marc - Eon Company or what we would expect them to pay us for the units if we produced them for them.

Q Was there any discussion had on the subject of novating the contract versus subcontract?

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A Yes. Mr. Rouse did mention novating the contract as the simplest form of doing business in that particular case.

Q What was the reply, if any?

A Well, Mr. Leonard's reply there was that he didn't want to novate. He would rather the company keep the prime and finish it as a prime contractor so that they could administer it through the end of the contract because they wanted to keep in good graces with the government because they had other contracts at Eon that they wanted to produce on.

Q Did there come a time when the credit worthiness of the American Marc Division of Eon was a topic of discussion during this day?

THE COURT: Credit worthiness, did you say?

MR. MITCHELL: That is correct.

Q In other words, the ability of American Marc - Eon to pay Teledyne any price which might be agreed to as a subcontract price.

A If I recall correctly, during the meeting Mr. Rouse had made a telephone call back to our office in Muskegan and asked --

Q Were you present when he made the telephone call?

A Yes, I was.

Q Were you listening in on an extension?

A No, I was listening to his side of the conversation.

Q Was anybody else present during this telephone conversation other than yourself and Mr. Rouse?

A I'm sure that Mr. Walper was still seated and I'm not sure whether Mr. Leonard was there at the particular time because he was in and out of the meeting on different occasions, so I am not positive whether he was there at that particular moment.

Q And subsequent to this telephone conversation had by Mr. Rouse, was there any further discussion with Mr. Leonard and the American Marc people?

A Would you repeat the question? I didn't hear it, sir.

MR. MITCHELL: I will withdraw the question.

Q After Mr. Rouse's telephone conversation did the meeting continue?

A Yes, it did.

Q What was said, as best you can recollect, immediately after Mr. Rouse's telephone conversation?

A Well, Mr. Rouse made the telephone call and at that particular time we just continued to discuss the arrangements that would be made between American Marc-Eon

and Teledyne. Mr. Rouse again asked for novation and Mr. Leonard again said he didn't want to novate the contract.

Q Did there come a time when Mr. Rouse told you what the substance was of this telephone conversation?

THE COURT: There was no substance to the conversation. The only thing he did was ask the question. He got no answer. At a subsequent time there was an answer.

MR. MITCHELL: May I have the last answer read back?

(Answer read.)

Q Did there come a time when Mr. Rouse had occasion to make a second telephone conversation during the day?

A Yes, late in the afternoon.

Q And who was physically present to hear him within earshot during this telephone conversation?

A I believe I was the only one present on the second telephone call.

Q From what you heard what was the sum and substance of at least his side of the telephone conversation?

MR. FELDSHUH: Objection. It is not binding on any of these defendants.

THE COURT: Overruled. It's for the purpose of setting up an answer.

What do you remember about that conversation?

THE WITNESS: Well, Mr. Rouse had a conversation --

Q Just state what you heard Mr. Rouse say.

A I heard Mr. Rouse ask about the D&B report on the Eon Corporation and words to the effect from his portion of the conversation that they were not in too good shape and that special arrangements should be made.

Q And thereafter did the meeting resume?

A Yes, it did.

Q And what if anything did Mr. Rouse say with regard to the topic you heard him speak of on the phone?

A Mr. Rouse informed Mr. Leonard that -- of the D&B report, that Eon was reportedly not in too good a shape and to assure the Teledyne Company that they would receive the monies that were due that some kind of special arrangements would have to be made to assure Teledyne that they would own the monies from the second year procurement.

MR. FELDSHUH: I missed the last three words.

THE COURT: Own the money, o-w-n, is that right?

THE WITNESS: Yes.

Q And what if anything did Mr. Leonard say in response to this?

A Well, there was quite a bit of conversation and I guess the outset of it was that they would agree to set up a special bank account where the money from the government would flow through and be held for the payment of TCM invoices only.

Q Up to this point had the amount of the per unit subcontract price been determined or been agreed

upon by negotiations?

A I believe it had, but I am not positive just what time of the day since we met all day that it did come up. I believe it had.

Q At some point during the negotiations this day did Mr. Lennard say anything with regard to the adequacy of the money to come in from the government under the second procurement year with regard to paying Teledyne for its per unit price under the subcontract?

A Yes, after discussing the special bank account and Mr. Rouse trying to get him again to novate, he said that he thought we were -- and I am trying to recollect his words -- he thought we were being overly cautious because the money from the second year procurement was there and available.

Q Did you ask Mr. Leonard then what the dollar amount was to be paid by the U. S. Government to American Marc undre the second program year?

A No, sir.

Q Did you come to learn during the year --

THE COURT: I take it you mean either you or Mr. Rouse?

THE WITNESS: As far as I recall, sir, we didn't ask how much money was under the contract.

THE COURT: That is what I understood his question to be did either one of you ask. Is that the way you understood the question?

THE WITNESS: Yes.

THE COURT: By the way, I take it you didn't do much of the talking in this meeting, or am I wrong?

THE WITNESS: No, I didn't do too much talking. I was there as an observer and assistant to Mr. Rouse.

Q What was the discussion which ensued that day concerning the setting up of a special account? Do you recall what the conversation was? Who first brought up the idea?

A I believe, if I recall correctly, Mr. Rouse brought up that he would have to have a special bank account or some means of assurance.

Q And did the Bank of America become the subject of discussion during that meeting?

A The Bank of America was suggested by Mr. Leonard as being a large California Bank and if I recall Mr. Rouse's statement, he said "Yes, we know the Bank of California and they are a big bank."

THE COURT: Bank of America.

THE WITNESS: Bank of America, yes.

THE COURT: You misspoke.

A "And that would be acceptable."

Q Were there any discussions had concerning the possibility of Teledyne Continental Motors attaching funds held or to be held in the Bank of America special account?

A Would you repeat that, please?

MR. MITCHELL: Would you repeat that, please?

(Question read)

A I don't recall and I am blank on that particular thing. I don't recall any such words in my recollection anyway.

Q The word "attachment" to the best of your recollection was not discussed, is that correct?

A Right.

Q Did there come a time during the course of these discussions that Mr. Rouse or yourself requested that the money to be coming in from the government under the second program year be put into an account controlled by Teledyne, into a Teledyne account?

A There was discussion about a bank account controlled by Teledyne and it was determined that this

could not happen because the government would not be doing business with Teledyne and so therefore could not pay to a Teledyne account. So it was set up into a special account of American Marc and we were to be paid out of that.

Q What was your understanding of why the government would not pay Teledyne?

A Because we were not a prime contractor to the government. We were a subcontractor to the American Marc Don.

Q Based on your experience with government contracts, is it your opinion that the government will only pay a prime contractor and not a subcontractor directly?

A Yes, sir.

Q Was there also a discussion on that day -- I am referring to May 10 -- concerning any inventory or excess inventory on hand at American Marc?

A Yes, we looked at that inventory when we made our plans here and discussed that there were certain inventories that would be in excess of the first year procurement and the 250 unit add onto the first year and that American Marc would like to sell us that inventory for use on the second year procurement.

Q And did any discussion ensue concerning

negotiating a price for the inventory?

A Yes.

Q What was that discussion?

A Well, we really was talking about two things at the same time, the inventory and the tooling, because without one you didn't need the other.

THE COURT: Tell me what tooling is.

THE WITNESS: Thr fixtures, the situation, the special test equipment, etc., that is required to perform a particular contract.

THE COURT: Why did you need the tooling?

THE WITNESS: Without thetooling we wouldn't need the contract because we would have to make new tooling ourselves which would be prohibitive.

THE COURT: So you couldn't have done it?

THE WITNESS: Yes, sir.

Is it fair to state that the inventory would ultimately go into the end product and the tooling would have to be used to do the manufacturing process? Is that a fair statement?

A Yes, that is right.

Q Did the question come up during the negotiations on this day as to the ownership of the inventory?

A We asked Mr. Leonard if American Marc owned the inventory and he said yes, it did belong to American Marc and therefore they could sell it to us.

Q And --

THE COURT: I take it you could have bought the tooling from these people and bought the inventory elsewhere?

A Yes, sir, we could have.

THE COURT: Without the tooling no deal?

THE WITNESS: Right, yes, sir.

THE COURT: You would have made a deal without the inventory?

THE WITNESS: Yes, we could have gone to other vendors or a vendor and got a part, but not without the tooling.

Q Did there come a time during that day when a price was agreed on for the inventory?

A Yes, after some negotiation it was agreed that -- between Mr. Rouse and Mr. Leonard that we would pay 75 cents on the dollar for the inventory and I think the figure wound up to be $25,000 for the tooling.

THE COURT: The costs had nothing to do with their costs, that was just a flat figure?

THE WITNESS: A flat figure, yes, sir.

Q When you say 75 cents on a dollar for the inventory, what was that 75 cents on a dollar measured against?

A By taking the purchase order from American Marc to their ventors that supplied an individual part, the cost of that part less 25 per cent.

Q So is it a fair statement that the amount of the inventory, the purchase price of hte inventory, couldn't be determined that day as a dollar figure?

A No, sir.

THE COURT: It is a fair statement, yes, it could not?

THE WITNESS: Yes, it could not be determined.

Q During the course of negotiations on May 10, did Mr. Leonard have occasion to leave the room, to leave the presence of the other negotiating parties from time to time?

A Yes, during the course of the day everybody was leaving the room at different occasions. Mr. Leonard did have occasion to leave several differnt times.

Q Did you yourself take any notes of the negotiations during the day?

A I didn't.

Q Did you observe anyone else taking notes?

A Mr. Rouse took notes the entire day, which is his normal method of operation,and in every meeting I have been on he did, so, yes, he did.

Q My question refers to that day.

A Yes, he did.

THE COURT: Did Mr. Leonard take notes as far as you know?

THE WITNESS: I don't think so, sir. I don't think so.

THE COURT: And the other person, whatever his name was, he didn't take notes?

A No, sir.

Q And was a per unit price for the subcontract worked out that day, that is, May 10?

A Yes, I believe it was. I think it was finally settled at $360 per unit of which we would pay Mr. Walper $5 per unit.

Q Was Mr. Walper present during the majority of these negotiations on this day as well?

A Yes, he was.

Q And was the topic of a $5 per unit fee for Mr. Walper -- did it come up in the presence of Mr. Leonard during that day?

A Yes, it did.

Q Approximately what time did the meeting adjourn on the 10th?

A To the best of my recollection Mr. Leonard got a little heated up and decided to go home around 5 o'clock or shortly after, and so we adjourned the meeting.

Q What was the occasion of Mr. Leonard's getting heated up as you put it?

A If I recall correctly, he was not too happy with the price offered for the tooling, one, and, two, that we'd asked too much money per unit for the second year procurement.

Q Well, as of the end of the day, the end of negotiations on May 10th, was there in fact an agreement on the per unit price for the generator set?

MR. FELDSHUH: He just testified to that.

MR. MITCHELL: He just testified --

THE COURT: He wants to make sure this last answer doesn't qualify that.

A Yes, there was an agreement on the price that we would settle for.

Q And had the figure of 75 cents on the dollar been definitely established for the inventory at the close of May 10th?

A If I recall correctly, the offer of 75 cents on a dollar plus the $25,000 for the tooling -- Mr. Leonard made the statement thathe could not authorize that until he talked to his people in New York and that was just prior to leaving the meeting that evening.

Q By that are you referring to both the price for the inventory and the price for the tooling, or are you referring to just one of those?

A Both.

Q Did the meeting resume the next day, that is, on May 11, 1971?

A The meeting resumed in Mr. Rouse's room at the International Hotel on the 11th.

Q How did it come to be that it was at Mr. Rouse's room as opposed to American Marc offices?

A I believe, if my recollection is correct, that Mr. Leonard would rather we meet at the motel or the hotel, rather, than to meet at the plant since he didn't want too much commotion around for the other people in the plant to see. The reasons for it I am not sure.

Q During the meeting of May 10th had he indicated any plans to liquidate or close down the American Marc plant?

A Yes, he had made the statement to us that the reason they were looking for a subcontractor was that they just recently stopped or had stopped producing a diesel engine line they had and that the overhead for that particular facility could not be supported with just the 1.5 contracts, so consequently they would like to subcontract the remainder of that out and close the facility.

Q Approximately what time did the meeting of May 11th commence? What time of day was it?

A Somewhere in the neighborhood of 9 o'clock. The exact time I don't recall. Around 9 o'clock.

Q And at the time of the commencement of the meeting of May 11th had either you or Mr. Rouse prepared the draft agreement to go over?

A Yes, Mr. Rouse had prepared a rough draft of what was discussed on the 10th in preparation for Mr. Leonard's arrival and of the terms and agreement that they had reached the day before.

Q I show you Plaintiff's Exhibit 5 in evidence, which is an agreement ultimately executed on May 12th concerning the inventory, and I ask you if this is the final agreement which the draft you are referring to related to?

MR. FELDSHUH: If he knows.

Q If you know.

A Yes, this is the final agreement.

THE COURT: The question was was the draft you were talking about on May 11 the draft of that agreement?

THE WITNESS: Yes, it was.

Q Did this draft subsequently become typewritten?

A Yes, Mr. Walper had arrived at the room. Mr. Walper and I took the handwritten notes from Mr. Rouse, took it to a public stenographer for typing and brought it back to the hotel room.

Q And were Mr. Leonard and Mr. Rouse at the hotel room when you left with Mr. Walper?

A Mr. Rouse was there. Mr. Leonard had not arrived. He arrived while Mr. Walper and I were going to the stenographer.

Q Approximately what time did you return from the stenographer?

A Around 10:30, a quarter of 11. I am not sure exactly what time it was.

THE COURT: What time did you leave to go there?

THE WITNESS: It would have been about 9:30,

a quarter of 10, somewhere in that neighborhood.

Q I take it that the meeting could not have started at 9 o'clock thatmorning if you had left at 9:30 and Mr. Leonard had not shown up?

A The meeting with myself and Mr. Rouse and Mr. Walper was -- Mr. Walper arrived around 9 o'clock, sir.

Q Was that when you were referring to before when you said "The meeting started"?

A Yes, it was.

Q Was a discussion had when you and Mr. Walper returned concerning the typewritten draft of the agreement that you came back with?

A Was a discussion --

Q Had.

A When Mr. Walper and I returned with the typewritten forms, Mr. Rouse reviewed it, looked over it, it was a poor job of typing. There were several errors in it. They did review it, yes.

THE COURT: You mean by "they" --

THE WITNESS: Mr. Rouse, Mr. Leonard, myself.

THE COURT: Mr. Walper wasn't with you?

THE WITNESS: Mr. Walper was there. I don't recall whether he looked at it or not.

Q Did there come a time when it was sent out again to be retyped?

A Yes, it was rewritten. Mr. Walper and I returned to another stenographer and had that rewritten -- retyped, I'm sorry.

Q If you know, where were Mr. Leonard and Mr. Rouse when you and Mr. Walper left the hotel to get it retyped again?

A They were at the hotel.

Q What time didyou return with the second typewritten draft?

A I just don't recall. I just don't recall what time it was.

Q Was it before lunch or after lunch?

A I can't remember, no, sir.

Q I believe you testified earlier at the close of the meeting on May 10 Mr. Leonard seemed unhappy about certain price terms. Was anything discussed on this topic in your presence on the morning of May 11th?

A I think when -- Mr. Leonard made the statement after we got back to the hotel, and Mr. Leonard made the statement that he had approval from New York on the terms that were offered the day before.

THE COURT: Is it necessary to repeat and

duplicate testimony that is not in issue?

MR. MITCHELL: You're right, your Honor.

THE COURT: As a matter of fact, it seems to me you want an answer.

MR. MITCHELL: I haven't gotten to the time when Mr. Coleman and Mr. Rouse were there.

THE COURT: You want to cover when Mr. Coleman and Mr. Anton were there?

MR. MITCHELL: Yes, I will cover that.

THE COURT: Mr. Coleman left for a good part of that.

MR. MITCHELL: Not the meeting in American Marc.

THE COURT: Skip to when Mr. Anton was there and cover that and then go on to new stuff.

Q Approximately what time did the meeting of May 11th adjourn?

A Around 3:30, 4 o'clock in the afternoon.

Q And did any meeting take place the following day, Wednesday, May 12th?

A On May 12th, Mr. Leonard had told us -- on May 11th, Mr. Leonard had told us he had a Mr. Anton flying out from New York to cosign the agreement and that he would arrive sometime around noon on the 12th.

And on the morning of the 12th, around noon, Mr. Leonard and Mr. Anton picked Mr. Rouse and I up at the hotel and we journeyed to the American Marc office.

Q And did a discussion take place at the American Marc office?

A Yes.

Q Who was present?

A Mr. Anton, Mr. Leonard, Mr. Rouse and myself.

Q Did you see any documents signed in your presence on that occasion?

A No, isr.

Q Were you given any contract or purchase orders or anything of that sort during the meeting at the American Marc offices?

A During thatmeeting Mr. Rouse had made some other handwritten notes that he wanted to go over with them and they discussed those particular notes, we talked about the purchase order for the ultimate means of us getting the units built for American Marc. Mr. Leonard had already prepared that from the previous day's discussions. He brought it into the office and --

THE COURT: What was that?

THE WITNESS: The purchase order.

A (Continuing) And at that time I saw the

purchase order, yes.

Q Was any discussion had at this time concerning segregation of the inventory to determine which parts could be sold to Teledyne and which were needed by American Marc?

A We had discussed and made arrangements for me to return to Los Angeles approximately a week later and with the necessary people to inventory, physically inventory their stock, segregate the first -- the parts required forthe first year procurement and the 250 add-on, and bond room those other items so we could get them shipped to South Carolina.

THE COURT: When was that arrangement made?

THE WITNESS: It was made on the morning of the 12th.

THE COURT: Who was present?

THE WITNESS: Mr. Rouse, Mr. Leonard, Mr. Anton and myself.

MR. FELDSHUH: Was that bond room? I didn't get that.

THE WITNESS: Yes.

THE COURT: Bond room. What does that mean? I heard that, too. What does that mean?

THE WITNESS: It's a method of securing any inventory that you might own so that no one else can get to them until you -- it's a term used by the government. Bond room means you put it in there and you can't take it out until the government says okay. So we use the same terms in our industry from one manufacturer to another: We bond room.

MR. FELDSHUH: Thank you.

THE COURT: I assumed it meant something like that.

MR. FELDSHUH: I was quite sure it meant that, too.

Q Did you subsequently go backto Walterboro that afternoon?

A Yes, I left Mr. Rouse, Mr. Leonard, Mr. Anton at the American Marc plant and Mr. Walper had arrived sometime during the morning and he volunteered to take me to the airport to catch my plane.

THE COURT: He wasn't at the meeting, as I understand it.

THE WITNESS: No, sir, he was not.

Q I show you a copy of a two-page document indicating on the upper righthand side "M-1257-9" and ask you if you can identify this document?

A Yes. This is a mod. to the original purchase order.

Q And do you recognize the signature on the bottom righthand side of the first page?

A Yes, Mr. Jim Leonard.

MR. MITCHELL: Your Honor, this is the signed copy of the modification 9 which sets up the bank account, Plaintiff's Exhibit 4 in evidence, contains as far as modification 9 goes an unsigned copy.

THE COURT: You want that as 4A?

MR. MITCHELL: I think if we can designate this as 4A thatwould be appropriate.

MR. FELDSHUH: Your Honor, could we have a short voir dire on this?

THE COURT: Certainly.

MR. FELDSHUH: Mr. Weinberger will conduct it, sir.

(Plaintiff's Exhibit 4A was marked for identification)

VOIR DIRE EXAMINATION

BY MR. WEINBERGER:

Q Mr. Coleman, you have looked at Exhibit 4A for identification, have you not?

A Yes.

Q Do you recall, sir, the circumstances surrounding the obtaining of that document?

A This is a mod. to the purchase order setting up the mechanics tothe special bank account.

THE COURT: He wants to know do you remember getting it, how you got it?

When did you see this document the first time?

THE WITNESS: It was mailed to me by Mr. Leonard.

Q When was that?

A It was in October.

Q Of 1971?

A 1971.

Q How did that document come to be mailed to you?

MR. MITCHELL: Mr. Weinberger, the document is in evidence.

MR. WEINBERGER: Not yet.

MR. MITCHELL: No, the document Mr. Weinberger is referring to, the cover letter was mailed --

THE COURT: Don't interrupt the voir dire examination.

The question was how did this document get to be mailed?

THE WITNESS: On the original purchase order the mechanics for setting up the special bank account was omitted and in order to get it into the purchase order there had to be a mod. And when we informed Mr. Leonard that it had been omitted and that we wanted a mod. to the purchase order then he made the mod. and mailed it to me.

THE COURT: Did you inform him? Did you talk to him about that?

THE WITNESS: I think my contract administration people did, yes.

Q Who was that, do you know?

A To the best of my recollection it was either Mr. Anderson or Mr. Saunders.

Q Isn't it a fact, Mr. Coleman, that Plaintiff's Exhibit 4A for identification was sent to you with a cover letter by Mr. Leonard?

A It's possible, I don't remember.

Q And it is not a fact, sir, that Plaintiff's Exhibit 4 for identification --

MR. VARY: 4A, Mr. Weinberger.

MR. WEINBERGER: 4A, I'm sorry.

Q May I ask you, did you initiate a request from Mr. Leonard to obtain Exhibit 4A?

A Did I initiate a request from Mr. Leonard?

Q To Mr. Leonard, to obtain Exhibit 4A?

A I don't know whether I did or not. My contract administration people could very possibly have.

Q Is it possible that you telephoned Mr. Leonard and asked him to incorporate a modification in the purchase order in the form that ultimately resulted in Exhibit 4A for identification?

A Either myself or Mr. Rouse could very possibly have called him, yes.

THE COURT: You don't remember?

THE WITNESS: I don't recall one way or the other.

Q On the occasion --

THE COURT: How is this relevant to the admissibility of this document?

MR. WEINBERGER: I would like, your Honor, to get to the surrounding circumstances as to how this document --

THE COURT: ARe you challenging the validity of the document?

MR. WEINBERGER: Not yet, no.

THE COURT: Do you plan to challenge the validity of the document?

MR. WEINBERGER: The answer to that, your Honor, is that if I hear information that would warrant it --

THE COURT: All right, if you are planning to challenge it, go ahead. I was just trying to find out whether you planned to challenge it.

Q Did this second page of Exhibit 4A also -- was it received in the order in which it appears before you now in an unsigned copy?

A The second page is merely sheet two of the modification. The second page of thisis merely sheet two of the modification. The modification is signed on page one.

THE COURT: Is that a copy?

THE WITNESS: Yes, sir.

MR. MITCHELL: Your Honor, may I point out one thing? A copy of similar modification 9 was produced from defendants' own files and was marked as partof Exhibit 20 to Mr. Anderson's deposition. It was marked as Defendants' Exhibit 20A for identification.

MR. WEINBERGER: Your Honor, apropos of that remark by Mr. Mitchell, he made the comment on a number of occasions so that the record is quite clear as to what happened with the documents coming out of the files. The

record should also reflect, your Honor, that some files of American Marc were out in California. In the course of the discovery proceedings arrangements were made to try to receive whatever files were available to get them to New York. And so whatever files were found by New York people were voluntarily produced. That is not to say that we had a knowledge as to the keeping of the files.

THE COURT: Do you really think you aer going to challenge the validity of this document? I will give you as much time as you want, but I don't see you getting anywhere. If you are not going to challenge the validity of it please don't waste any more time about it.

Q This second sheet appears to be a carbon copy as compared to the first sheet which does not appear to be a carbon copy. Do you have any explanation of that, Mr. Coleman?

A I do not.

THE COURT: Mr. Mitchell has said you produced a copy of this from your files. Whether it came from New York people or San Francisco people or people from the moon, if it was in your files how could there be a question of its authenticity?

Q The notation here is received October 19, 1971.

It was received by Teledyne?

A Yes.

Q And on the occasion it was received by Teledyne did you have occasion to see this amendment?

A Yes.

Q Did you look at it?

A I glanced over it, yes.

Q When was that, sir?

A When I received it.

Q On what date would that be?

A In October sometime.

Q In other words, on or about the time that is stamped here as having been received by Teledyne?

A Yes.

Q I show you, Mr. Coleman, Exhibit 4, modification No. 9 contained in Exhibit 4, Exhibit 4 being the entire series of modifications. Do you see that, sir?

A Yes, sir.

Q Do you see the first page of modification 9 in Exhibit 4?

A Yes, sir.

Q Is it correct that the date stamped on there is October 13?

A Yes, sir.

Q Whose stamp is on that modification No. 9 in Exhibit 4?

A My plant's stamp on it.

Q And there is what purports to be a copy of that stamp of Octob er 19 by Walterboro on Exhibit 4A?

A Yes, sir.

Q And Exhibit 4A has the Walterboro stamp on it with October 19 and purports to have a copy of Mr. Leonard's signature?

A Yes, sir.

Q The part of Exhibit 4 which purports to be the same document with the original Walterboro stamp does not have Mr. Leonard's signature on it; is that correct?

A Right.

Q Can you explain, sir, how that is, since both documents were received by your plant and Exhibit 4-A appears to be a copy of the document that is in Exhibit 4?

THE COURT: Can you explain that?

THE WITNESS: Yes, sir.

THE COURT: Do so.

THE WITNESS: You will note the paper on this exhibit is part of the original purchase order which Mr. Leonard forgot to sign and sent to us on the 13th. We informed him of that, Mr. Leonard. We made a copy of it and sent it back to him showing him his signature was not on it. He signed a copy and sent it back, which we received on the 19th.

Q Do you have a series of correspondence to that effect?

A What do you call a series of correspondence?

THE COURT: Did you write him a letter about it or did you call him on the phone?

THE WITNESS: I called him on the telephone,

I believe. Not for sure -- me or my contract ad people did.

THE COURT: I will give you four more minutes on this.

MR. MITCHELL: I suggest there is no substantive difference in terms between this document being shown here, except that it is signed, and the document that is already in evidence as part of Exhibit 4, and that the necessity of conducting a voir dire, when there is no substantive difference, appears beyond me.

THE COURT: I don't see it. It seems to me he is trying to reinforce your case, but I suppose that is not his motive.

Q Did you see Exhibit 4-A when it came in on October 13, 1971?

A Yes.

Q So that you saw it twice, on October 13, 1971, and you saw it again on or about October 19, 1971?

A Yes.

MR. WEINBERGER: I have no further questions.

THE COURT: Is there any further objection to the document?

MR. FELDSHUH: I think the record is clear now, your Honor, that we have got 4-A, since the difference

between that and Exhibit 4 has been clearly demonstrated on the record, so that I think we ought to have one or the other of the two documents.

THE COURT: I think it is very important we have two because I want to draw the inference that they deliberately sent the first one unsigned.

MR. FELDSHUH: Or the alternative inference, sir, and there might well be an alternative, that page 2 is a carbon copy while page 1 is a ribbon copy.

THE COURT: I think it is very important that both documents be in and we can all draw whatever inference that we want. The inference that has occurred to me as a result of the brilliant cross-examination is perhaps that the first one was sent in unsigned on purpose.

MR. WEINBERGER: May I ask a question as to that, your Honor?

THE COURT: No, you may not. You have had your 12 minutes. The document is received in evidence and there will be one cross-examination of this witness, not two.

MR. FELDSHUH: Okay, sir. I know.

(Plaintiff's Exhibit 4-A received in evidence.)

BY MR. MITCHELL:

Q Mr. Coleman, when you left and returned to Walterboro on the 12th, did you thereafter participate in the segregation of the inventory pursuant to the agreement with respect to the inventory?

A Yes, I did.

Q When was that?

A The first part of June in 1971.

Q What happened in this regard?

A Well, approximately a week after our meeting in Los Angeles, the original meeting, Mr. Leonard came to Walterboro and looked at our plant. I came to New York with Mr. Leonard to visit the Eon plant for the purpose of viewing the inventory which was held at the Eon plant that would be used on the second year procurement, since Eon was making the control box for that particular unit.

THE COURT: Was the inventory in New York?

THE WITNESS: Yes, sir, both places.

THE COURT: New York and California?

THE WITNESS: Yes, sir. Shall I continue?

Q Please continue.

A Then after my trip to New York with him I made arrangements for my purchasing agent and another one of my personnel to come to New York to physically inventory,

separate, segregate and ship back to Walterboro the inventory which would be used on the second year procurement. I took the accountant from our plant and went to California where he in turn inventoried, separated and shipped back to Walterboro that inventory which was used on the second year procurement.

Q So did there come a time when the inventory necessary for American Marc to complete its obligations and the excess inventory which was to be sold to Teledyne was segregated?

A Yes, during the first week of June.

Q And thereafter were shipments made of this inventory to the Teledyne facilities in Walterboro?

A Yes, there was.

Q Roughly, over what period of time would such shipments take place?

A Shipments went up through the latter part of August of that year.

Q 1971?

A Yes.

THE COURT: I should remember this from reading Judge Bauman's opinion, but what happened to that inventory? What is the issue about that inventory?

MR. MITCHELL: The issue in the inventory is that

there was a cash payment by Teledyne for the inventory and the inventory was in fact not owned by American Marc. It was a subject of progress billings.

THE COURT: Then the government claimed it back?

MR. MITCHELL: No, your Honor, the government took it off the latter part of the contract. There was less funds remaining in the contract.

THE COURT: The government made you pay it over again?

MR. MITCHELL: Subtracted it from the amount remaining to be paid.

THE COURT: In effect, made you pay it over again.

Q Did there come a time when the dollar amount of the inventory was determined? That was the inventory that was to be purchased by Teledyne?

A Yes.

Q Do you recall at the present time, Mr. Coleman, the dollar amount of the purchase price of the inventory as ultimately determined?

A After it was all received and invoiced, approximately $196,000 to the inventory.

MR. MITCHELL: I have a document which I would

like to mark as Plaintiff's Exhibit 58 for identification.

(Plaintiff's Exhibit 58 marked for identification.)

MR. MITCHELL: For the record, so that there is no mystery, this is a file copy of the inventory agreement which is in evidence as Plaintiff's Exhibit 5, and I will not offer it in evidence, but I will offer it to refresh the witness's recollection as to the amount.

Q I show you, Mr. Coleman, a figure which appears to be a pencilled-in figure of $196,859.16 and ask you if that refreshes your recollection as to the amount ultimately determined of the inventory?

A Yes, that is my writing.

THE COURT: I take it it doesn't refresh your recollection, but you remember putting that figure down?

THE WITNESS: Yes, I remember putting this figure here.

THE COURT: When you put it here that was to mark the inventory?

THE WITNESS: It was to keep a record on that document, yes.

Q So this in fact is your own writing on here?

A Yes, it was.

MR. FELDSHUH: I will concede that he wrote it

and I will concede that is the figure.

MR. MITCHELL: Can we agree on this figure as the price of the inventory? That is the subject of my offer.

MR. FELDSHUH: I will just concede that if Mr. Coleman were asked to testify he would testify that Teledyne paid $196,859.16 to Eon as consideration for the inventory referred to in the agreement dated May 12, 1971.

THE COURT: Is that correct?

MR. MITCHELL: Yes.

THE COURT: Okay, so conceded.

Just to keep my mind straight, the tooling isn't involved in this?

MR. MITCHELL: That is correct.

Q Was this figure of $196,000 some-odd in fact paid to Eon Corporation?

A Yes,it was.

Q Was the amount of $25,000 paid to Eon Corporation with respect to the tooling?

A Yes, it was.

Q Was this paid in cash or check?

MR. FELDSHUH: I will concede it was paid. I don't care how.

MR. MITCHELL: As opposed to an offset.

THE COURT: It was paid by cash; correct?

THE WITNESS: Yes.

MR. FELDSHUH: Eon actually received that money, that is all.

Q Now, subsequent to your return from Los Angeles on May 12 and other than the segregation of the inventories to which you just testified, did you thereafter have any further responsibilities with regard to the subcontract with American Marc?

A It was my responsibility to supervise the manufacturing of the generator set that we were subcontracting from American Marc-Eon.

Q Did you have occasion to meet with Mr. Leonard in Walterboro with regard to the production of the 1.5 kilowatt generator sets under subcontract?

A Yes, I did.

Q Do you recall the date of the first such meeting?

A It was around the 1st of July in 1971 with Mr. Leonard and Mr. Wally Hammond.

Q Who is Mr. Hammond, for the record?

A He was vice-president and director of manufacturing, I believe, at American Marc.

Q What was the substance of the meeting that was held at that time?

A Mr. Leonard and Mr. Hammond had made arrangements or had shipped two complete 1.5 generator sets at the time -- they left air freight -- and the component parts for two complete generator sets, so that they would arrive at the same time, so that we could go over them and discuss with Mr. Hammond any problems which might come up in the manufacture of those two particular units.

Q How did the meeting break up that first day?

A At the end of the first day Mr. Leonard said that he was going on to New York to attend a Board meeting, a board of directors meeting at Eon. Mr. Hammond stayed because the government representatives were coming into our plant to review our plant facility and related to the 1.5 subcontract.

Q On that occasion did someone from the government come to review the Walterboro facilities?

A It was the day after, the 5th or 6th, in that area, of July. There was a crew of gentlemen from St. Louis, MECOM, who did arrive at the plant.

Q Does that stand for Mobility Equipment Command?

A Yes,it does.

Q Is this an agency of the U.S. Government involved in certain forms of government procurements?

A Yes, it is.

Q What kind of inspection or meeting took place at this time?

A Well, when the government people arrived we showed them through the plant, let them view the other generator set that we were building, the manufacturing of it or test equipment. They went through our entire plant and then we came back to the table where we had set up the two completed and two incomplete generator sets to where the discussion about its manufacture could be taking place while we were looking at something. The meeting started at the table and then moved into my office in the front.

Q What people were there from MECOM, from the United States Government, Mr. Coleman; do you recall their names?

A There were several. There was a Mr. Roach.

Q How do you spell that?

A R-o-a-c-h, I believe it is. He is the PCO.

Q Would you define that, PCO?

A Procurement Contracting Officer. Along with him was a -- I am trying to remember these names.

THE COURT: Does it make any difference?

THE WITNESS: There were five or six people.

MR. MITCHELL: No.

THE WITNESS: There was quality people. There

were engineering people.

Q But was Mr. Roach in charge of it?

A Mr. Roach was in charge of the complete meeting.

Q Would Mr. Roach converse directly with yourself?

A No, he would not.

Q Would you tell his Honor how communication ensued between yourself and Mr Roach?

A During the course of all conversation after the plant tour Mr. Roach made the statement that he would not talk to me because we were not his preliminary contractor; that American Marc was his prime and he would direct all questions and receive all answers from American Marc.

Q So, during the course of the meeting on this day did a more or less triangular communication take place between yourself and the government?

MR. FELDSHUH: I don't know what that means, triangular.

THE COURT: I do. It means through Mr. Leonard or whoever else was there.

THE WITNESS: Mr. Hammond.

THE COURT: Mr. Hammond?

THE WITNESS: Yes. On every question he would ask Mr. Hammond and Mr. Hammond would turn and look at me and I would answer the question and he would, in turn,

answer to Mr. Roach.

MR. FELDSHUH: All three of you were present?

THE WITNESS: Yes.

Q Did the United States Government thereafter approve Teledyne Continental Motors as a qualified sub-contractor for 1.5 kw generator sets?

A In the course of that meeting they had determined that or at least made the determination that we had the capabilities of producing the 1.5 generator set. However, since we had not produced that identical set prior to this time, they requested from Mr. Hammond that we build two first article units and that they be tested by a qualified lab to insure the government that our production would be the quality that was called for in the prime contract.

Q Did it ultimately come to pass that Teledyne was approved?

A Yes, it did, after the successful testing of those two units.

THE COURT: And after that would they talk to you direct or would they still go through American Marc?

THE WITNESS: A little more direct. They still wanted all their answers from American Marc.

Q Did there come a time when you had occasion to

visit Mr. Anton in New York during this period? That is, prior to actual production by Teledyne?

A Well, as I said a while ago, I came with Mr. Leonard a week before this meeting with the government to meet Mr. Anton and look at their inventories.

Q So that the meeting you were talking about with Mr. Hammond and Mr. Roach and formerly Mr. Leonard, before he left Walterboro, was the second meeting you had with Mr. Leonard?

A Yes,it was.

THE COURT: The first meeting was here in New York?

THE WITNESS: The first meeting was at my plant where he and I came to New York.

THE COURT: The meeting at the plant and then both of you came to New York and met Mr. Anton?

THE WITNESS: Yes.

Q Were you introduced again to Mr. Anton at this point in New York?

A When I came to New York with Mr. Leonard?

Q Yes.

A Yes, I was.

Q What was the conversation you had with Mr. Anton on this occasion?

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A Well, at this particular meeting Mr. Anton told us of Eon, explained the inner workings of the company and took me on a tour of their plant. Then we got down to looking at the inventory.

MR. FELDSHUH: I'm slightly confused here. May I get some clarification? This meeting that you are now talking about looking at the inventory, wasn't that much before the government inspection?

THE WITNESS: Yes.

THE COURT: It was before the government inspection?

THE WITNESS: Yes.

MR. FELDSHUH: I'm sorry, sir.

Q Was anything else that you recollect of a substantive nature discussed during the arrangement between Teledyne and Eon?

A Not that I recall, no.

Q Referring to the occasion of your first visit to Mr. Anton in New York?

A No, not that I recall.

THE COURT: When you were going around the plant, did Mr. Anton take you around the plant to show you the inventory?

THE WITNESS: He took me, Mr. Anton took me

around the plant to show me his operation. Then some of his people took me to see the inventory.

THE COURT: He did not take you to see the inventory?

THE WITNESS: He did not personally, no.

Q Did there come a time when Teledyne began producing generator sets for shipment to the government?

A Yes.

Q Approximately what time was this?

A We started producing in late August and shipped our first shipment in October, I believe, or November.

Q At this time, the time of the first shipment, what was the arrangement with Eon's American Marc Division concerning the method of invoicing and billing; what were the mechanics that were followed?

A Since we were a subcontractor we had to sell the units to the government QAR who would in turn sign that document accepting the quality provision of the contract.

MR. FELDSHUH: What does QAR stand for?

THE WITNESS: Quality Assurance Representative.

Q Is this something that took place in Walterboro?

A In Walterboro, yes. We would then send the DD 250 and our invoice on our own invoicing paper to Mr. Leonard. Mr. Leonard would then, in turn, or some of his people would then, in turn, take the DD 250, price it or do whatever they needed to do to it to finish it up and send it to the government for payment.

Q Would you describe what in general a DD250 is? Is this a government form?

A Yes, it is.

Q What sort of government form is it?

A It is a form where the paying offs of the government will only pay after they have received a signed DD250 or a copy of authorization that the quality assurance people have approved the shipment, or have approved the quality of the item -- not necessarily the shipment.

Q In other words, is it fair to say that the DD250 is a form in which the government indicates the acceptance of a given number of units?

A Yes.

Q Did Teledyne ship individual units or did it ship aggregated units?

A We shipped them in lots of 150.

Q What would happen when a lot of 150 was finished? Would the government QAR check it, check the individual units?

A Yes, we would.

Q Upon checking if he found it appropriate would he then sign the DD250?

A Yes.

Q What would then happen in terms of invoicing American Marc?

A We would take --

Q Take a given lot, for example, suppose you have a lot of 100 units, how would it work?

THE COURT: 150?

Q 150 units. Describe how it would work.

A We would have a lotof 150 ready to present to the government. When I say present, packaged, ready to be loaded on a truck. We would present that particular lot to the government OAR. We would have already typed up the DD250 with all the pertinent information coming out of the prime contract except the price.

If the government OAR man agreed with the shipment, agreed with the terminology on the piece of paper and he accepted the shipment, he would then sign that DD250 and we would take the original and send it to Los Angeles to Mr. Leonard to affix his numbers or whatever he had to do to it and send it on to the government.

THE COURT: So when it got to the government it looked as though it came from Leonard?

THE WITNESS: Yes, sir.

Q Was the Teledyne invoice to American Marc physically attached to the DD250?

A Yes, it was. In all respects we invoiced the same time we sent the DD250 to Mr. Leonard.

THE COURT: So you never found out at this time what his price was?

THE WITNESS: No, sir.

THE COURT: You didn't find that out until this lawsuit?

THE WITNESS: I found out before that, sir.

THE COURT: All right. That is probably not material.

MR. MITCHELL: Your Honor, I have a series of forms which indicate DD250 on them as well as forms which appear to be invoice forms on the stationery of the invoice letterhead of Teledyne Continental Motors. I have had these marked as Plaintiff's Exhibit 11 for identification. And I would like to show them to the witness.

(Plaintiff's Exhibit 11 was marked for identification)

THE COURT: Perhaps you can represent what they are?

MR. MITCHELL: Yes. Your Honor, I represent these are from the Teledyne files. They are file copies of the Teledyne invoices to American Marc which

Mr. Coleman has just been describing, as well as copies of the DD250's which Teledyne would physically annex to their invoices with the price blank and send out to Mr. Leonard. Those are the copies from the Teledyne file.

THE COURT: For the whole operation?

MR. MITCHELL: For the operation insofar as Teledyne was concerned.

THE COURT: Teledyne's entire inventory?

MR. MITCHELL: That is correct, your Honor, until the contract was terminated because of non-payment. But as long as the invoice procedure is kept on in the normal course --

THE COURT: It was while being shipped?

MR. MITCHELL: Yes.

THE COURT: You accept that representation, sir?

MR. FELDSHUH: Without looking at it, I accept it.

Q Mr. Coleman, would you examine that also and tell me if that agrees with my representation?

A Yes, it does.

(Plaintiff's Exhibit 11 was received in evidence)

Q Mr. Coleman, in the Teledyne invoice forms that are a part of Plaintiff's Exhibit 11 in evidence, did this constitute billings made by Teledyne to American Marc for shipment of inventory -- shipment of generator sets?

A Yes, it did.

Q In other words, if you added all these invoices together, would this show the total billings that Teledyne made to American Marc during the course of theshipment of generator sets?

A It should, yes.

MR. MITCHELL: For the record, Iam producing as Plaintiff's Exhibit 12 for identification four checks--they are Xerox copies of four checks, we do not have the original -- checks on the Bank of America, Palos Verdes branch.

THE COURT: Representing payments received?

MR. MITCHELL: Yes, I will represent these checks constitute the payments received by Teledyne Continental Motors as against the invoices which are Plaintiff's Exhibit 11 in evidence. And I represent these are from our files, but are Xerox copies and we do not have the originals. I assume the originals cleared in the normal banking challenge.

MR. FELDSHUH: I accept the representation of counsel,your Honor.

THE COURT: It is received in evidence.

(Plaintiff's Exhibit 12 was received in evidence)

MR. MITCHELL: Let me further state, just to clarify the record, your Honor, that these four checks are in the following denominations: 54,000, two for 162,000 apiece, and one for 216,000, which total up to the figure of $594,000.

THE COURT: There is a letter from the bank which says one of them was sent by Mr. Leonard?

MR. MITCHELL: That is correct, your Honor.

THE COURT: How much longer have you got?

MR. MITCHELL: I think, your Honor, I want to total up the amount of the invoices. I think that is something to be done over the lunch break rather than take the time now.

I would say I probably have a half hour or a little less.

THE COURT: You seem to be disorganized. Is this a good time for a recess?

MR. MITCHELL: That would be fine, your Honor. Iwould appreciate it.

THE COURT: Five minutes of two.

(Luncheon recess)

AFTERNOON SESSION

1.50 P.M.

HOMER F. COLEMAN, resumed.

DIRECT EXAMINATION CONTINUED

BY MR. MITCHELL:

MR. MITCHELL: Your Honor, during the luncheon recess we have gone through and run a couple of tabulations on Exhibit 12,which has just been entered into evidence, and we find that the Teledyne invoices total up to the sum of $1,315,720.80 as against checks inpayment thereof totalling $594,000, leaving an unpaid balance of $721,720.80.

THE COURT: That comes to more than the $10,000 needed for jurisdiction.

MR. MITCHELL: That is correct. For present purposes,your Honor,to explain,we would like to deem the ad damnum clause of the complaint reduced to incorporate the amount of $721,720.80 together with such interest as may have been due from the due dates thereof.

In order to further explain it to your Honor, after the contract was terminated Teledyne, in mitigation, made other arrangements with the government to resell the balance of the inventory of generator sets and therefore that balance, which is not reflected in the invoices which are in evidence is, as far as we are concerned, out of the

case and we deem that to have been in mitigation.

MR. FELDSHUH: Just for clarification, so I understand, Mr. Mitchell, do I understand you to say, then, that with regard to the moneys that Teledyne received for the sets sold directly by Teledyne to the government, Mr. Feldshuh, that we are not claiming additional damages above and beyond the $721,000, which is the account balance as a result of the remaining generator sets which Teledyne did bill to American Marc but which Teledyne disposed of alternatively?

Could I have on the record, if you don't mind, to expedite things, the amount for which you did sell those remaining sets, because I may say as a matter of law it must go in mitigation?

MR. MITCHELL: I don't have that amount now, but I will supply it?

MR. FELDSHUH: Thank you.

THE COURT: If that is just even with the contract price it would wash out. If it was more than the contract price it would take some off the loss in mitigation.

MR. MITCHELL: If there has been a breach of contract, your Honor, we would take the position that the defendant is not entitled to an offset at any point after the breach.

THE COURT: We don't have to decide that now.

MR. MITCHELL: That is our position.

THE COURT: When we get the figures we can decide it.

MR. MITCHELL: If Mr. Feldshuh is going to take this figure and claim any offset for reduction in the 721,000 -- we may have had incidental damages, costs of reselling and so on, which, if your Honor would ultimately determine there is an appropriate offset, we might have offsets to the offsets, so to speak, in terms --

THE COURT: Why don't you discuss that now between yourselves and at the time we resume we will have concluded whether this is worth mitigating or you can wash it out between yourselves.

MR. MITCHELL: I think that is an appropriate statement.

MR. FELDSHUH: Thank you, sir.

MR. MITCHELL: Do you have the last question and answer,Mr. Reporter?

THE REPORTER: No, the other reporter had it.

MR. FELDSHUH: I think the last one, your Honor, according to my notes, was that Mr. Mitchell asked about the total being $584,000.

MR. MITCHELL: $594,000.

MR. FELDSHUH: Yes, I lost $10,000 at lunch.

Q Did there come a time when you had responsibility in connection with the collection of the account balance with American Marc Division with regard to the generator sets?

A In February of 1972, when we divisionalized, I then became responsible for the total operation, which would then have put me in responsibility for the account balance.

Q Are you saying that in February of 1972 Teledyne Continental Motors reoriented so that you had different responsibilities at that time?

A Yes, they divisionalized in February of 1972 and at that time the Walterboro Division became a company on its own and I was promoted to vice-president and general manager of that particular plant.

THE COURT: It became a subsidiary?

THE WITNESS: Of Teledyne Industries, yes, sir.

MR. MITCHELL: I believe, just to clarify the record, it is still a division as opposed to a formal subsidiary. I think operationally it became discrete.

THE COURT: I see.

Q Did there come a time, Mr. Coleman, when the amount billed and unpaid on the American Marc account for

the 1.5 kilowatt generator sets became a subject of concern to you?

A Yes. In the latter part of April, the first part of May, I noticed --

Q Is this 1972?

A 1972, yes. I was informed by my controller and went over the records that American Marc-Eon was getting behind in payments on our invoices.

Q At that point did you make any attempt to secure payment from American Marc?

A At the outset I had the controller contact Mr. Leonard at American Marc and try to contact Mr. Walck at American Marc to see if he could collect these funds.

Q Who was Mr. Walck at American Marc?

A He was introduced to us on the 10th of May in 1971 as the controller of American Marc.

Q Were there any further discussions that took place concerning this account?

A Yes. Several attempts were made by our controller, several attempts were made by the contract administrator and in the latter part of May, the first part of June, I made personally several attempts to get the money from Mr. Leonard.

Q To the best of your recollection, and taking them

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in sequence, when was your first contact with Mr. Leonard in this regard?

A Well, I made several attempts without being able to get ahold of Mr. Leonard in the latter part of May, if I recall correctly. It was in the first part of June, I believe, the first or seconddday, somewhere in that neighborhood, that I finally reached Mr. Leonard. The reason I was unable, I was told, was because an answering service answered his calls to American Marc, and later in the day or week they were relayed to Mr. Leonard and he finally called me in the first part of June.

THE COURT: When was the first time you tried?

THE WITNESS: I tried in the latter part of May.

Q Is there anybody else that you had spoken to before being able to get ahold of Mr. Leonard?

A I hadn't prior to Mr. Leonard the first time. I had after I talked to Mr. Leonard the first time, then I tried other sources, yes.

Q Upon the occasion of your first talking to Mr. Leonard about the account balance what did he say with regard to the lateness of payments?

A He said that he had not received the money from the government yet and that he would investigate and see why he hadn't and get back with me. That was on the first occasion.

Q Did he subsequently get back to you?

A He did get back and he told me that the government hadn't sent it to him yet and they were in the process of getting it mailed to him and he would try to see what he could do.

THE COURT: How much time was that between each time?

THE WITNESS: Oh, three to four days, sir.

Q Subsequent to these telephone conversations, did you have other occasions in which you contacted Mr. Leonard or someone in American Marc with regard to this non-payment?

A Yes, on the next occasion, which I waited what I thought was sufficient time for him to have received the money and send us the money, I contacted him again and on that occasion he told me that the records had been shipped to New York and that they were to handle the account out of the Eon office in New York and that I could contact Mr. Anton about the payments.

Q During the course of these conversations, was there any discussion between yourself and Mr. Leonard about the special account?

A In the last conversations that I had with Mr. Leonard prior to discontinuing shipping, I asked him what happened to the money that was in the Bank of America that belonged to Teledyne. And he said that he didn't know, the records were on their way to New York and I would have to contact them to find out.

Q Did Mr. Leonard indicate to you in substance that he no longer controlled the funds in the special account?

A I believe he indicated to me thathe had resigned from being a vice president of American Marc and a director of Eon and was I believe his words were a consultant to them at that particular time. So consequently, the control of the money was

handled by New York.

Q Did he state that the control of the money was being handled in New York, or did you just infer that?

A No, he stated that the money was being controlled from New York.

Q And thereafter did you have occasion to contact any one else at Eon concerning the account balance?

A I talked to Mr. Anton on several occasions.

Q Was this on the telephone or in person?

A On the telephone.

Q Do you recall approximately the date of the first occasion of your telephone call to Mr. Anton?

A It was in the middle of June, somewhere in the middle of June, 1972 that I -- after talking to Mr. Leonard that I talked to Mr. Anton.

Q And what did you say to Mr. Anton and what did he say to you on this telephone conversation?

A I related to Mr. Anton that Mr. Leonard had told methat the -- I first told him why I was calling, it was in regard to the payments to Teledyne from American Marc and that Mr. Leonard had told me that the records had been shipped to New York and that the

bank account was being controlled from New York and that I could possibly get some information on our payments from him.

Q And what was his response, if any?

A He told me that he didn't know about the records being shipped, he didn't know whether they had been shipped or not, he would -- he certainly didn't have them there and thathe would check into it and let me know.

Q And did there come an occasion when Mr. Anton and you had a further telephone conversation?

A Yes, a day or so later we had a conversation about those records which at that time he told me they were in the process of being shipped from California and that as soon as he could see the records then he would get back with me.

Q Subsequent to that --

THE COURT: How long was this conversation after the last conversation with Mr. Leonard?

THE WITNESS: Well, Mr. Leonard's conversation was in the first part of June and about the middle of June when I had my first conversation with Mr. Anton and then a couple or three days after that first conversation with Mr. Anton he got back with me.

THE COURT: So it was about two weeks after that?

THE WITNESS: I would say approximately, yes.

Q I believe, Mr. Coleman, you testified now as to two telephone conversations with Mr. Anton during this period. Did you have occasion for a third telephone conversation?

A Yes, I sent -- after I was unsuccessful in getting an answer to the problems we had, I sent a telegram to Mr. Jim Leonard with a copy to Mr. Anton that unless I could receive -- due to my being unsuccessful in obtaining the money or an answer as to when I would get my money, that I would be forced to hold up shipments until other arrangements could be made. And at that time, or shortly thereafter, I did talk to Mr. Anton again.

Q And to the best of your recollection, what was said during that next conversation with Mr. Anton?

A Well, he was asking me to please continue to ship the remaining units; that it could solve a lot of problems if we did and it would -- let's see, how did he state it? I can't recall just how he stated it at this late date, but it was in essence that he

wanted us to continue to ship the remainder of the contract so it could be completed.

Q And thereafter did you have occasion to meet personally with Mr. Anton?

A I told Mr. Anton on that particular telephone call that it would be almost impossible to ship unless I received the money, that I was -- intended to be in New York on the 29th day of June and would like very much to come into his office and talk to him about the situation.

THE COURT: Was that another purpose for being there?

THE WITNESS: Yes, I had other business, sir.

Q And was in fact a meeting set up for June 29th?

A Yes, there was.

Q And did you call up anyone else for purposes of arranging a meeting on June 29?

A Yes, I did. I told our legal counsel, Mr. Earl Kotts from Detroit, and asked him to meet me in New York and accompany me to the office of Eon to talk to Mr. Anton.

Q And did you and Mr. Kotts meet at the office of Mr. Anton on June 29?

A Yes, we did.

Q Approximately what time?

A Somewhere around 9 or 10 o'clock, I can't recall the exact time, but it was approximately then.

THE COURT: In the morning?

THE WITNESS: Yes.

Q Do you recall where the building was that you met him at?

A On Pearl Street, in Brooklyn.

Q Did this appear to you to be the main offices of Eon Corporation?

A It appeared to me to be, yes.

Q And who was present at this meeting?

A Mr. Anton, Mr. Kotts and myself.

Q What was said during the course of this meeting with regard to payments for the generator sets shipped by Teledyne?

A Well, Mr. Anton couldn't answer why we hadn't received our money right off, but he did suggest thatin order to get payment for our invoices that we -- he first admitted he didn't have the money and then he said that we could get paid by taking what he referred to as green stock --

THE COURT: What does that mean?

THE WITNESS: At that time I didn't know, sir. I checked into it and found out it was unissued stock, but at that time I didn't know, either.

Q Is it possibly referring to unregistered stock?

A It could well be. I just checked into it and found it hadn't been issued. That is the only thing I --

THE COURT: He said green stock?

THE WITNESS: Yes, he said green stock.

Q Is it a fair statement that Mr. Anton indicated that Eon didn't have the money to pay Teledyne during this meeting?

A Yes, he did.

Q What else occurred at this meeting?

A Well, we asked him what happened. asked him what happened to the payments that they had received for the sale ofthe generator sets from the government that was supposed to have been paid to us. He said that the money was taken by board decision to pay other debts owed by Eon and I believe his words were "We'd worry about Teledyne later."

Q What did you understand him to mean when he said "board decision"?

A A board of directors.

Q Was there any further conversation had during the course of that meeting?

A Well, we continued talking about trying to find out what happened to the money that was supposed to have been in the Bank of America.

We didn't come to any solutions or tothe problem on that meeting and I told Mr. Anton that I thought we needed the answer to three questions, and one was how much was left in the contract to pay Teledyne.

Q You mean at the time of your meeting?

A At the time of our meeting, how much was left in the contract to pay Teledyne for the generator sets.

No. 2, what happened to the monies that was in the Bank of America that we had reason to believe that had been received by them.

No. 3, how much money was still left in the bank account in the Bank of America. And that we would go back to the hotel and contact Mr. Anton the next morning to see if he could answer those questions for us.

Q Did Mr. Anton during the course of this meeting state an amount of money which had been utilized from the

account in the Bank of America for other purposes by Eon? Was a dollar amount mentioned?

A I think I mentioned a dollar amount that I suspected had been paid by the government to Eon in the bank account, and asked him in substance what happened to the remainder of the monies that were there.

THE COURT: At this time had you found out what their price was?

THE WITNESS: In an off the record, yes, I had.

THE COURT: So when you were talking to him you knew the price?

THE WITNESS: I knew that they had received certain paymens, yes.

MR. MITCHELL: Your Honor, I may clarify that point.

Q Subsequent to the execution of the subcontract by Teledyne, did Teledyne receive modifications to the prime contract between American Marc and the government from time to time?

A On the prime contract?

Q Yes.

A Yes, there were numerous mods. to the prime contract.

Q And what was the purpose generally speaking of

Teledyne --

MR. MITCHELL: Withdrawn.

Q How did Teledyne get these modifications?

A The modifications went from the government to American Marc, Jim Leonard would then send us his copies of those modifications as related to the prime contract to be inserted into the prime contract.

Q And did any of these modifications subsequently received have prices, per unit prices on them?

A Yes.

THE COURT: That is how you found out?

THE WITNESS: Yes.

Q Well, I believe you testified that you mentioned a dollar figure to Mr. Anton in the course of the meeting you just have been describing. Do you recall what the dollar figure was that you mentioned to Mr. Anton?

A If I can recall correctly, I mentioned to him that we had reason to believe that the first part of April they had received slightly over $200,000 from the government and that on or about the 20th or 24th of April they had received slightly over $200,000 from the government, and that in early June they had received approximately $80,000 from the government.

Q Did Mr. Anton say anything at the time in the nature of these amounts were incorrect?

A Not that I recall.

Q How in fact had you become apprised of these particular amounts?

A You mean how did I find out about them?

Q Yes, how did you find out about them?

A Well, my contract administrator was talking to people in St. Louis, in the procurement office, and they gave him the approximate figures that could have been paid on those dates.

Q And was this at your request that he checked into the amount?

A Yes.

Q And do you recall approximately what time you made the request of your contract administrator that he check into these accounts?

A It was in early June after I was unsuccessful in getting any answers about payments.

THE COURT: You left to go back to the hotel and call Mr. Anton. Did you call?

THE WITNESS: Yes, I didn't call him. He called us.

THE COURT: What happened then?

THE WITNESS: Well, I stated to Mr. Anton that his verbal proposal of the day before was not acceptable to our company, thatwe were only interested in the cash that was due us, and that he might put into writing his proposal and send it to Mr. Kotts in Detroit for further consideration.

Q Well, to your knowledge was this proposal ever accepted?

A No, sir, it was not.

THE COURT: To your knowledge it was not accepted?

THE WITNESS: No.

Q I believe you testified that Mr. Anton indicated to you that it was a decision of the board of Eon to take certain monies out of the account. Was there any further questions by yourself or discussions with regard to how this was done?

A Mr. Kotts may have asked a question in similar nature. I don't recall just how he might have phrased it.

Q But do you recollect of your own present knowledge any discussions ensuing concerning this topic?

A You said as to how they took the money out of the bank?

Q Right, any further clarification of what Mr. Anton meant in his statement that the board authorized the withdrawal from the account?

A Other than they had taken it and used it to pay other debts.

Q Prior to the statement by Mr. Anton, were you aware of any use of the funds in the Bank of America to pay other than Teledyne?

A No, sir, I was not.

THE COURT: To go back to your original discussion with Mr. Leonard before you met Mr. Anton, what was your understanding as to how that account was to be set up?

THE WITNESS: The understanding that I had was that they were going to set up a special bank account where the government would pay the monies that were invoiced on the DD250's that htey were going to send in, would go to a special bank account and according to the letter to the Bank of America which asserted it was a special bank account.

THE COURT: Of course the letter was later.

THE WITNESS: Right. That money belonged to Teledyne and would be used to pay Teledyne only and only after Teledyne had been paid could any of the

remaining money be used for other purposes.

THE COURT: That was the understanding you came away with in that original meeting. I am not talking about later.

THE WITNESS: Yes, that was my understanding of why it was set up in the beginning.

Q One final question for clarification. When you testified earlier as to your meeting back in Los Angeles and your meetings of May 10th through 12th, subsequent to the determination of the price of $360 per unit which would be payable to Teledyne under the subcontract, were you ever told by Mr. Leonard that enough monies remained in the prime contract to satisfy future payment to Teledyne?

A Well, I think I said at one point that Mr. Leonard had said that we were overly cautious, that the second year procurement funds were there and available and added probably later that there was more than enough to take care of Teledyne.

Q Did you understand him in the context of that statement to mean from the second year program?

A Yes, sir.

Q And had Mr. Leonard indicated before words to the effect that American Marc was in a profit position

on the contract?

A Yes, he did, at our first meeting and in the office when we went out to the plant, that they were in a profit position at that particular time, but if they had to continue producing that 1.5 generator in that facility with no other contracts, then they would not be in a profit position on it.

MR. MITCHELL: I have no further questions, your Honor.

THE COURT: Would you like a few minutes to organize your thoughts?

MR. FELDSHUH: Just a moment, sir. I am ready to start the cross.

THE COURT: You are ready to start?

MR. FELDSHUH: Yes.

THE COURT: We will take a brief recess. The witness is not quite ready to start.

(Recess)

T3 CROSS EXAMINATION

BY MR. FELDSHUH:

Q Mr. Coleman, you testified a moment ago about Mr. Leonard's comment to you in May as to you and Mr. Rouse that"You are overcautious." Do you recall that, sir?

A I think I recall saying, "You are being over-cautious."

Q At that particular moment when he said that, that was in response to a question by Mr. Rouse or yourself as to assurance that Teledyne would get paid; isn't that right, sir?

A Yes.

Q And then the talk about the bank account also on that occasion was the talk with Mr. Leonard; is that right,sir?

A Yes.

Q Mr. Anton was not there upon those occasions?

A Not on the 11th. Mr. Anton was there on the 12th.

Q Now, as I understood your testimony, on the 12th you testified that Mr. Anton came in the morning; is that correct,sir?

A Yes.

Q Didn't he meet you for the first time at the

entrance door of the Hotel International?

A Yes.

Q And you had proceeded in a car to the American Marc office?

A Yes.

Q There was no talk in the automobile, was there, about a bank account?

A Not that I recall.

Q Wasn't there a point in time when you had lunch with Mr. Anton?

A No, sir, I did not.

Q You didn't have lunch?

A No, sir.

THE COURT: You want back to --

THE WITNESS: South Carolina, yes, sir.

Q Was there any occasion, sir, after Mr. Anton arrived and after, as I understood you to say, you journeyed to the plant, that there was talk about the bank account in Mr. Anton's presence?

A Yes.

Q Who said what on that occasion?

A Mr. Rouse went over the conversation that had been held the day before with Mr. Leonard and reviewed them and the bank account was an item. Part of the agreement

was to set up the special bank account to handle the money.

Q And it was Mr. Rouse's suggestion the day before that this --

A This came up in conversation the day before, the agreement finalizing the agreement, yes.

Q Was there any mention of any bank other than Bank of America?

THE COURT: At which time?

Q Let's stay on May 11.

A As I recall it, sir, Mr. Leonard said, "How about the Bank of America?" And we are familiar with the Bank of America, so we had no objections to the Bank of America.

THE COURT: Mr. Leonard said, "How about the Bank of America"?

THE WITNESS: Yes.

THE COURT:

The words "We are familiar with the Bank of America" is not what he said but what you said?

THE WITNESS: Yes.

Q How are you familiar with them?

A Our company does business with them, I think, through the Bank of America. I'm not sure.

Q Was this reported to Mr. Anton, that the Bank of America was agreed upon between Mr. Leonard and Mr. Rouse?

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A Yes.

Q It was so stated to him.

There came a point in time, sir, when in fact you did receive -- when I say "you," I mean of course Teledyne -- you did receive payments and they did come out of Bank of America, being Plaintiff's Exhibit 12, these checks?

A Yes.

Q And the aggregation of these checks were some $512,000?

MR. MITCHELL: $594,000, Mr. Feldshuh.

MR. FELDSHUH: Thank you. That is even better.

Q $594,000. I'm losing dollars somewhere.

THE COURT: You had a very expensive lunch.

MR. FELDSHUH: I am losing dollars all over.

Q Actually it is the fact, isn't it, sir, that it was wasn't until April or May of 1972 that there was the first occasion when you didn't receive a check from the Bank of America in payment of your invoices; is that the first occasion?

A That was when they started getting behind with payments of invoices.

Q Were there any other occasions prior to the ones that you described to his Honor in April, the latter part of April and beginning of May, and so on, when you called

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up Leonard and said, "Where is our check?" In words or substance?

A Let me see if I understand your question. Prior to April, you are saying?

Q Yes.

A Did I call him and ask him where --

Q Yes.

A No.

Q You had no occasion to do that then?

A No.

THE COURT: When was the first time you called Leonard?

THE WITNESS: The latter part of April or beginning of May.

THE COURT: You are not sure whether it was April or May?

THE WITNESS: No.

Q Isn't it a fact that after you called Leonard, wasn't there a payment of $213,000 to Teledyne?

A No, sir.

Q Wasn't there one shortly before that one then, if you remember?

A There was a payment, sir. It was not $213,000.

Q You are quite right. I'm getting worse. It

happened to be $216,000.

MR. FELDSHUH: I'm really doing poorly today.

Q Isn't it a fact that there was a payment by check dated May 15, it looks to me,or it might be May 13?

A May 18.

Q And that is for $216,000?

A Yes.

Q And this check came in, I take it,sir, after you had noticed that there was some payments lacking for April and May, the early part of May?

A Yes.

Q Did this check come in to you for $216,000 in response to a telephone call to Mr. Leonard?

A Yes.

Q You called Mr. Leonard. How soon after you made that telephone call do you recall you got this check for $216,000?

A If I recall correctly, on one of my conversations with him he said he had sentor he had directed the bank to send that check.

Q And in due course you got this check?

A Yes.

MR. FELDSHUH: Referring, your Honor, to the fourth check on Plaintiff's Exhibit 12.

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Q How long after May 18, 1972, did you make a complaint to Mr. Leonard, May 18 being the date of this check for $216,000?

A I made a complaint to Mr. Leonard on several occasions during the month of May, also after May 18, because the $216,000 did not liquidate the whole debt.

THE COURT: What was the debt at that time, if you remember?

THE WITNESS: I don't recall just exactly what it was, sir, but it was considerably more than $216,000.

THE COURT: A hundred thousand more?

THE WITNESS: No, it would be more in the neighborhood of $300,000 more or more than that.

THE COURT: I see, give or take.

Q Mr. Coleman, with regard to Walterboro, how big a plant was Walterboro in May of 1971?

A When you say how big of a plant, what do you mean?

Q How many employees?

A In May of 1971? We had approximately 125, 130 employees.

Q Does that include administrative help, too?

A Yes.

THE COURT: It included you, for example?

THE WITNESS: Yes, it did.

Q How big was the work force at that time, people actually in the factory other than the administrative help?

A About 110 to 115 hourly people working.

Q Was this a unionized shop?

A No.

Q Non-union?

A Non-union.

Q In March of 1971 it is a fact, is it not, that Teledyne Walterboro had submitted a bid to the government for the manufacture of 1.5 kilowatt generators; is that right, sir?

A Not in May.

Q In March, I said.

A Yes.

Q Did youprepare that bid, sir?

A I was in on the final preparation of the figures and just before mailing the bid in to the government.

Q And the manufacture, if you did get the bid from the government, the prime contract, would have been at your plant? By "your plant" I mean at Walterboro?

A Yes.

Q How much was your bid, sir?

A I would be guessing at this late date on the actual figure, sir, so I would rather not -- I don't know.

I don't recall what it was at that particular time.

THE COURT: Within a ballpark.

THE WITNESS: It was 350 to 300. I would say somewhere between 345, 350 and 360, in that area.

And that particular bid, if I recall correctly, sir, had two different types of generators to be introduced, an AC and a DC.

Did you ever hear of the Benton Reporting Service?

A No, sir.

Q In connection with your experience in submitting bads to the government, isn't there some service that arranges to get the results of the opening of the bids and who bid what?

A There could be. I know of none, but there could be.

Q Just look at this paper and see if it refreshes your recollection as to the amount that you had bid in March of 1971, and if you will just follow my figure, sir, you see a legend here, "Teledyne Continental."

A Yes.

MR. MITCHELL: If I can interrupt, I would be glad to stipulate with you. If you can give me a figure, I'm sure I can have our people check it and we can come

to an agreement on what the bid was.

MR. FELDSHUH: Right. $349.75.

THE COURT: That is within your ballpark, isn't it?

MR. FELDSHUH: Very much in the ballpark.

THE WITNESS: Yes.

MR. MITCHELL: When is that report dated that gives the $349.75 figure?

MR. FELDSHUH: This report is dated April 7, 1971, the opening of the bid of this particular contract.

Q Sir, you told his Honor that there came a point in time when you learned of the amount that American Marc was to get paid under the prime contract. Do you recall your statement to his Honor?

A Yes.

Q What was that amount, sir, that you did learn?

A The amount of money paid to who?

Q American Marc. What was the price that American Marc was getting from the government for its generator sets?

A I said that there came a time when I saw the price and the price came in in some modifications which would -- in the modification to the prime contract which says that to perform this function you go from one price to another. I learned of it in that method and also our

government QAR people had a complete prime contract. They have to have.

Q When you say "our government QAR people," are these employees of Teledyne?

A The government people that was at our plant.

Q Then they either told you or showed you what the amount was?

THE COURT: What he is trying to get at is what do you now remember as to the amount?

THE WITNESS: I don't recall what it was. There have been so many figures over the years, I don't recall what it was.

Q Just from the point of view of a ballpark figure.

THE COURT: You know what it was. Why bother him? Tell him.

Q Was it 426?

A It could have been 900. I don't know. I can't remember.

Q You do recall at least that it was more than $360?

A I believe so, yes, sir.

Q And then when these QAR people spoke to you, you would confirm that in your own mind, if that was your belief that it was more than 360?

A Confirm it when?

Q Whenever you spoke with GAR.

THE COURT: What difference does it make? Everybody knows that it was more. He assumes it was more.

MR. FELDSHUH: Right.

THE COURT: We know that. What difference does it make?

MR. FELDSHUH: The difference is this: that Mr. Coleman knew then, if he assumed it, that that money would go into the special account.

THE COURT: We know that. I know it, you know it. What are we talking about?

MR. FELDSHUH: We are talking about his statement that the money was owned by Teledyne.

THE COURT: Tell him. What about the surplus? Can't you get at things directly? We have known since the case began that there was more money in the bank than Teledyne owned. Ask him about that, if that is what you are worried about?

Q You knew, did you not, there would be a surplus in that account?

THE COURT: You assumed that.

THE WITNESS: I think I said a while ago that the surplus would be used after Teledyne was paid.

Q I know, but you knew that there would be a surplus?

THE COURT: He said the surplus would be used. Therefore he knew that there would be a surplus. Get on to something else.

Q Didn't you have that knowledge or assumption in May of 1971?

THE COURT: He testified on direct examination that he understood in May, 1971, that thiswas to account for them and the surplus was to be used for you. That is what he testified on direct examination.

Q Do you adopt his Honor's statement?

A Yes.

THE COURT: Whether he adopts it or not, that is what he said. It is on record.

MR. FELDSHUH: I heard it differently than your Honor's recollection is.

THE COURT: By hopothesis it is correct.

MR. FELDSHUH: I have got to go by my recollection.

THE COURT: That has been so clear, that there is a surplus in that account -- it has been so clear and anybody reading Judge Bauman's opinion knows it and anybody hearing anything that has been going on today knows it, and this witness has just confirmed that he knows it and

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that makes it unanimous.

MR. FELDSHUH: Okay.

Q You met Mr. Walper, did you not, on the morning of May 10, 1971?

A Yes.

Q At the breakfast that you testified about at great length?

A Yes.

Q Was the figure of $5 per unit mentioned at that breakfast meeting?

THE COURT: I have ruled that that defense is out.

MR. FELDSHUH: That doesn't mean, your Honor, I am precluded from offering proof on it, because I may test that.

THE COURT: It is stipulated. What more do you want to know? It is stipulated that $5 --

MR. FELDSHUH: Maybe we can cut through this.

THE COURT: It is stipulated that $5 a unit was to be paid in to Mr. Walper. It is stipulated, so what more do you want?

Is it stipulated that $5 was a broker's or finder's commission? Is that stipulated?

MR. MITCHELL: The agreement itself is in evidence as Defendants' Exhibit A, which mentioned $5.

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THE COURT: Have you any statement to the contrary?

MR. MITCHELL: No.

THE COURT: So that was a broker's or finder's commission.

It is stipulated that the government knew nothing about this, I assume?

MR. FELDSHUH: Yes.

MR. MITCHELL: I would assume that the government didn't know anything about it.

MR. FELDSHUH: Will you stipulate to that? As far as the plaintiff knows, the government knew nothing about it?

MR. MITCHELL: We didn't contact the government about it.

THE COURT: The plaintiff does not assume to know the extent of the government's knowledge.

MR. FELDSHUH: You are helping me, fine.

THE COURT: What else do you want to know?

MR. FELDSHUH: Just let me think for half a second and then we can cut this one off.

One other thing, sir: can it be stipulated that Teledyne and its contract administrator employees had knowledge of the government rules and regulations with respect to procurement by the government?

THE COURT: I don't know. Can that be stipulated?

MR. MITCHELL: I think, your Honor, I can certainly stipulate in a general sense they did. I don't think anybody knows, any lawyer knows the entire volume of the U. S. Code by heart. I will stipulate that Teledyne had competent people in the contract administration department that were as current as anybody else.

MR. FELDSHUH: I wonder if I can have this marked anyway for identification?

THE COURT: Yes.

MR. FELDSHUH: Would you, please?

(Defendant's Exhibit E was marked for identification)

Q I show you, sir, Defendants' Exhibit E for identification which is a series of pages bearing at the bottom the legend "Armed Services Procurement Regulation."

Would you just look at them, sir?

THE COURT: Incidentally I take back my remark about anybody reading Judge Bauman's opinion. I don't think he even made it.

MR. FELDSHUH: I hadn't given weight to it.

THE COURT: That is terrible. Off the

record.

(Discussion off the record)

Q Sir, you did know, did you not, in May of 1971 that there were regulations with regard to Armed Services procurements?

THE COURT: Did you know of them?

THE WITNESS: I knew of them. I was not thoroughly familiar with them, but I did know of them, yes.

THE COURT: Did you know specifically when you have a contract with the government you are not supposed to pay a finder's fee?

THE WITNESS: Yes, I knew that.

MR. FELDSHUH: We can tate this witness knew --

THE COURT: You don't have to state it. He said it.

MR. FELDSHUH: I just want to include it in the stipulation.

THE COURT: You have got it in the stipulation. The witness said it.

MR. FELDSHUH: All right, fine, we'll go on.

Q When Mr. Anton arrived, was Mr. Walper present when you met Mr. Anton?

A No.

Q During the course of the discussions with Mr. Anton, was Mr. Walper present?

A No.

Q Was there any discussion after Mr. Anton arrived about Mr. Walper?

A Yes.

Q And where did that discussion take place?

A At the -- in the office at American Marc.

Q What was said by whom?

A Well, when we were going over the previous day's findings and agreement it was stated that we had to pay Mr. Walper $5 a unit as a finder's fee.

Q Who stated this?

A Mr. Rouse.

Q That was in the presence of Mr. Anton?

A Yes.

Q Did Mr. Anton comment on that at all?

A I don't remember, sir.

Q Sir, what is novate insofar as prim- contracts are concerned?

A My interpretation of novating a contract is that a prime has been given a contract. To novate that contract to another person would be to give that

person complete control of the prime contrac t and would then become the prime contractor on that direct to the government; would move the first person out of the picture completely.

Q Would that novating process also include negotiating the price?

A I have no knowledge of that. I don't really know whether it would do that or not. I just know it takes the responsiblity of one firm away and puts it on another. I would assume at the same --

Q That is an assumption?

A It's an assumption, yes.

Q I see. Could you give us the basis of that assumption?

THE COURT: He is not preparing for bar exams.

MR. FELDSHUH: I am only asking about his experience. If he has none, he has none.

Q With regard to Walper's appointment, do you remember when that was signed?

A If my memory serves me right, that agreement was typed and signed and postdated on the 11th posted to the 12th, because Mr. Walper was not sure that he would be able to see us on the morning of the 12th.

Q Who held onto the signed contract? Was it given to Mr. Walper on the 11th?

A A copy of it was.

Q Signed on the 11th, but it was postdated to the 12th?

A That's right.

Q What was the reason for that other than he might not see you on the 12th? That was the only reason.

A He wouldn't be there to get with us again. He didn't get a chance to see us.

Q With regard to the purchase order, didn't you receive that on the morning of the 12th?

A Yes.

Q On the occasion of your receiving it, was is signed?

A If I recall correctly, we went into the office and Mr. Leonard --

Q At American Marc?

A At American Marc. Mr. Leonard brought in the purchase order unsigned originally when he first came into the office.

Q That was on May 12?

A Yes. And I looked through it just to see that

the substance was there. Then he signed it and Mr. Rouse signed, I think, the acknowledgement copy, and that was it. That is when he signed it.

Q So that actually you read it, the purchase order, and Mr. Rouse read the purchase order?

A I glanced through the purchase order to see if the substance of the day before's agreement was there.

Q Did anyone ask that the purchase order include a statement about the bank account?

A Yes.

Q Who asked that?

A Well, this was -- in the agreement that we had the day before it was also in the --

Q The verbal agreement?

A No, the agreement that Mr. Leonard and Mr. Rouse had been going through for two days that they would make the special account. Also on the morning of the 12th we went over again that they would establish it and incorporate it to the best of my recollection.

THE COURT: No, the question was did anyone suggest it be put in personally?

THE WITNESS: Yes, I believe they did, sir.

I am not sure, but I believe they did.

THE COURT: Who suggested it and what happened?

THE WITNESS: If it was suggested it was suggested by Mr. Rouse and myself.

THE COURT: Why wasn't it there?

THE WITNESS: I don't know. I know it was not put in later. I didn't.

Q Mr. Coleman, you did go to the airport. Did you have with you a copy of the purchase order?

A Yes.

Q And what you had with you is now Plaintiff's Exhibit 3 in evidence?

A Less some modifications, yes.

THE COURT: Less some modifications?

THE WITNESS: Yes, when I took it with me on the plane some of these agreements were not there.

THE COURT: What was not there?

THE WITNESS: I'm sorry, there were no mods. on this. This was it.

Q This was it?

A Yes.

THE COURT: The handwriting, in other words?

Q Yes, how about the handwriting; whose handwriting

is this? Do you know? Page 3 of 7.

A I can't recognize the handwriting, sir.

Q Sir, would you just look at the reverse side of page 1. You will note the red word "delete." Is that your handwriting, sir?

A No, sir.

Q Do you see there circles in ink? Did you make those circles?

A No,sir.

Q You also see boxes in green crayon. Did you make those boxes?

A No, sir.

THE COURT: Were they on when you took them home with you?

THE WITNESS: No,sir.

THE COURT: Do you know when they got on?

THE WITNESS: No, that is the first time I have seen them, sir.

Q That was the first time?

A That is the first time I had seen those squares and everything on the back of them. I don't know when they were put on.

Q Sir, after you got this purchase order, what happened to it? Did you deliver it to somebody, perhaps

the contract administration?

A I took the purchase order with me on the plane back to South Carolina where I read it in a little bit more content and if my memory serves me right I did give it to contract administration to check, yes.

Q And that was shortly after you arrived back in Walterboro?

A Sometime later, yes.

Q Did you have a contract administration man at the Walterboro plant?

A No.

Q You had to send it to someone in Detroit?

A I sent it to Mobile, Alabama and a copy to Muskegon.

Q Sir, when you were on the plane and reading it, you said you read it at greater leisrure than you did before. When you arrived home, did you call Mr. Rouse and say to him, "By the way, we don't have anything in the bank account in thispurchase order"?

A I don't recall whether I called him or not the next day. I know that Mr. Rouse wrote a letter on the morning or on the day of the 13th of May, which in that letter stipulated that it was omitted from the -- the mod. was omitted from the purchase order -- I mean

the statement was omitted from the purchase order about the bank account.

THE COURT: You are talking about the letter of the 13th?

THE WITNESS: Yes, sir.

THE COURT: That is in evidence?

THE WITNESS: Yes, sir.

THE COURT: You don't recall whether you talked to Mr. Rouse about that before the order or not? Is that what you're saying?

THE WITNESS: If I remember, Mr. Rouse had a Xerox copy that he took with him also.

THE COURT: No, but the question is do you remember whether you discussed the question with Mr. Rouse before you wrote that letter?

THE WITNESS: I don't recall.

THE COURT: One way or the other.

THE WITNESS: I don't recall one way or the other.

Q Sir, when you were on the plane did you notice in that section which says "Net 30 days"?

A Yes.

Q Sir, as you look through the seven pages of this purchase order, but not the eighth page, you will

notice that it's true that a net 30 days appears on each one of these pages. Having read that, did that indicate anything? What did thatindicate to you?

A Well, it is a standard practice in making up any purchase order that you put your terms of payment on -- that is why there is a slot in every purchase order Normally you have your terms and conditions that is there.

THE COURT: He wants to know what does "Net 30 days"mean to you.

THE WITNESS: We would be paid within 30 days of invoice on each shipment.

Q There on the plane going back, did you have occasion to read the fine print on the reverse side of these pages?

A No.

Q However, sir, did you read the legend at the bottom which talks about the fact that the conditions on the reverse side are incorporated within the terms of the agreement?

A As I said, this is a standard --

THE COURT: No, the question is, did you read it on the plane?

THE WITNESS: I didn't read it on the plane.

THE COURT: The answer is no.

Q This clause at the bottom which begins with the word "price" and says in substance "This order subject to the terms and conditions shown on the reverse side," is that a standard clause with regard to purchase orders? Are you familiar with that clause?

A I am not in that part of the game so I would say yes, I have seen it on every purchase order.

Q Every purchase order that you had occasion to look at?

A Yes.

Q Sir, was there any mention during the May 10th and May 12th meetings --

THE COURT: May 10th or May 12th?

MR. FELDSHUH: May 10th through May 12th.

Q About Teledyne being a joint signatury onthe Bank of America?

A I am trying to think, but I don't recall. I don't know. I would rather not answer.

Q But you have no present memory?

A I have no present memory of it, no.

Q Sir, you testified that during your direct examination that the government would not issue a check or a payment to anyone under a prime contract other than

the prime contractor?

A Yes.

Q To your knowledge was there any prohibition for a check being issued by the government to a prime contractor being cleared through an account in which someone else might be a signatory?

THE COURT: I will take judicial notice there is no prohibition.

MR. FELDSHUH: Thank you, sir. I have a recollection your Honor brought that point up at sometime. I just wanted to clarify it, your Honor, in light of his testimony

Q You also testified in response to his Honor's question that if you had purchased the tooling from American Marc you could buy inventory from anyone else?

A I said I could buy it from other vendors, yes.

Q I mean, of course, from other vendors. With respect to these other vendors, wouldn't their quality have to be checked out by some government representative?

A Yes.

Q You just couldn't go out and buy a wire from Joe Blow down on the street that you didn't know was the

same wire without it being checked out by the government?

A Yes.

Q With respect to the purchase of this inventory from American Marc it was your knowledge, was it not, on the occasion of your going through the plant and your discussions in May 1971 that this inventory had been quality passed by the government inspectors? Right, sir, from the point of view of qualified vendors?

A Yes.

Q If you had to go elsewhere to get the inventory you would have to go through the procedure to have the government certify these outside people as qualified vendors?

A Yes.

Q Wasn't it a fact that in July of 1971 -- I believe you testified that was the date when you had some people, Mr. Roach and his group at the Walterboro plant for the purchase of qualifying Teledyne as a producer, manufacturer of this item. Well, it's a fact that as of July 1971 the government knew and the government agency knew that Teledyne was a proposed subcontractor of this article?

THE COURT: No, they didn't know. It was just an odd coincidence that Mr. Roach happened to be

there.

MR. FELDSHUH: All right.

Q Having had a contract with Mr. Roach and the government people were not the people in St.Louis accessible to you -- I have forgotten the name that you used, the military -- what was the name that you used, mobility command? Weren't they accessible to you by telephone if you wanted to ask about this prime contract in July of 1971?

A About which prime contract?

Q About the American Marc prime contract.

THE COURT: July '71?

MR. FELDSHUH: Yes, July '71.

Q In other words, what I am asking you is, sir--

THE COURT: Are you talking about price?

MR. FELDSHUH: Not only price, but something else which I believe is vital here.

Q What I mean by that, Mr. Coleman, as his Honor pointed out, the government knew that you were a proposed subcontractor. According to you as a proposed subcontractor, call the mobility command in St. Louis and find out the posture of this prime contractor from the point of view of the payments made thereunder?

A You might ask the question. I dont think

you would get an answer.

Q Why did you think you wouldn't get any answer?

A I don't believe anyone has access to that except the government people and the prime contractor himself.

Q Did you ever ask or do you recall any American Bank, I[illegible]ed, to get some kind of statement in writing as to the amount of payments that had been made under the contract?

A Having him get a statement in writing?

THE COURT: From the government.

A From the government?

Q Yes. Nobody asked him to do that?

A Not that I recall, no.

Q You didn't ask him at any time?

A I didn't.

THE COURT: And you didn't hear Mr. Rouse say anything?

THE WITNESS: Not that I recall.

THE COURT: And I think you wish you had heard from Mr. Rouse?

THE WITNESS: Certainly.

Q You testified that during the course of the

meetings on May 11th, or possibly even May 10th Mr. Leonard was leaving the room. Do you remember that testimony, sir?

A Yes.

Q And having left the room, do you know the purpose for his leaving the room?

A I have no way of knowing his purpose for leaving the room.

THE COURT: One time didn't he say he was going to call New York?

THE WITNESS: He said he would have to clear with his people in New York.

THE COURT: He didn't say he would have to leave the room for that purpose?

THE WITNESS: No, sir.

THE COURT: I see.

Q Sir, getting to the draft, the two drafts that you testified about going to the public stenographers, do you recall, sir, who dictated those drafts?

A Dictated the drafts?

Q Yes, sir.

A Mr. Rouse wrote them in longhand.

Q I see. Was that in the course of any telephone conversation?

A The second one was, yes.

Q And were you present on the hearing side where you could hear Mr. Rouse talk on the phone?

A Yes.

Q Do you know to whom that call was made?

A I believe it was to Mr. Earl Kotts.

Q He being general counsel?

A Yes, sir.

Q On the hearing side of that conversation that you were able to hear, did you hear any discussion about the special account?

A I heard Mr. Rouse say there would be a special account set up, yes.

Q And was there anything else said in that connection that you heard Mr. Rouse say?

A I was only hearing one side of hte conversation so I can't recall just exactly what was said one way or the other.

Q I am not asking you what was said on both sides, but I am just asking you anything else other than the words "a special account would be set up"?

A The conversation was lengthy, sir, and I can't recall everything.

Q You don't recall everything beyond that?

A No.

Q You don't remember?

THE COURT: What were you doing while the conversation was going on?

THE WITNESS: Setting in the room waiting for Mr. Rouse to get off the phone.

THE COURT: Were you listening for the purpose of remembering?

THE WITNESS: No, sir, I was not.

Q There came a point in time, as you testified, Mr. Coleman, in February of 1972 or thereabouts you became the top executive of the Walterboro plant, is that right?

A Yes.

Q Prior to that time you had also been in touch with a contract administrator section with regard to the terms of this purchase order, had you not?

A Yes.

Q And it was as a consequence of those -- were there many contacts that you had with the contract administrator section?

A Several.

Q Was a Mr. Saunders involved, if you remember?

A Yes.

Q And there was Mr. Anderson?

A Yes.

THE COURT: That is your own contract administration?

THE WITNESS: Yes.

THE COURT: Not the government's?

THE WITNESS: No, ours.

Q What did they say, if anything, about the terms of the purchase order? Did they object in any fashion to the terms of the purchase order?

A Yes, there were several exceptions taken to the language on the back of that related to the purchase order.

Q When you say on the back of it, sir, I take it you mean to this fine print on the reverse side?

A All of the purchase order.

Q Yes, where the markings are.

A All of it. They took exception to some of the mods. they entered into also.

Q When you used the word "mods." you mean modifications of this purchase order?

A Yes, right.

Q Did they discuss with you the modifications that they wanted? Did they discuss that with you?

A I am sure they did on occasions, yes.

Q Sir, you testified a moment ago about Mr. Saunders being part of the contract administration section of Teledyne. He was the supervisor of that section, was he not?

A He could have been, yes.

Q I see. Well --

MR. FELDSHUH: Would you mark this for identification, please?

(Defendants' Exhibit F was marked for identification)

Q I show you, sir, Defendants' Exhibit F for identification. Sir, do you recognize that to be a copy of a letter on the Teledyne Continental Motors stationery?

A Yes.

Q And looking at the second page thereof, do you see a copy of a signature?

THE COURT: Is this a Xerox copy?

MR. FELDSHUH: Yes, your Honor.

Q You recognize that to be a copy of Mr. Saunder's signature?

A Yes.

MR. FELDSHUH: I offer it, sir.

MR. MITCHELL: Mr. Feldshuh, just for the

record, this did come from the files of your clients?

MR. FELDSHUH: That was a Xerox copy that you supplied us, I believe. It may have come fromthe files of our client, yes.

MR. MITCHELL: I think so.

MR. FELDSHUH: Or may not.

MR. MITCHELL: I recognize the type of reproduction utilized at the time. I think it did come from the files.

MR. FELDSHUH: It was on a deposition conducted by you or your office.

THE COURT: Any objection?

MR. MITCHELL: I have no objection.

(Defendants' Exhibit F was received in evidence)

MR. FELDSHUH: For the record, your Honor, thisis, if your Honor would like to see it, a letter from Teledyne to American Mar[illegible] dated July 8, 1971 over the signature of M. W. Saunders, supervisor of the contract administration.

For the record, your Honor, the entry upon this or the legend that appears upon the first page are references to paragraphs 1, 5, 6, 8 and so on of the purchase order. Those references, your Honor, are keyed

into the terms and conditions on the reverse side of the purchase order, and the purpose of this, your Honor, among others, is that subparagraph H, which is this contingent fee provision, with regard to that, the statement here is -- and I now quote -- "You are hereby advised" -- you meaning American Marc -- "You are hereby advised that your following terms and conditions are deemed acceptable to Teledyne Continental Motors for inclusion in the terms and conditions of this agreement" -- and one of them being this paratraph.

I am going to offer another document, your Honor. While your Honor is looking at that, I hope to expedite this.

Would you kindly mark this, pleaes?

(Defendants' Exhibit G was marked for identification)

MR. MITCHELL: Your Honor, while Mr. Feldshuh is marking and offering these exhibits I would again like to state our position. If the purpose of this offer is on the contingency fee defense I believe your Honor has already ruled I think it's not appropriate.

THE COURT: I left open the possibility there might be a defense under this contract as between you two. I excluded it as a defense of illegality

because of the violation of federal regulations, but I haven't excluded the possibility it might violate this contract if he can prove his client didn't know about it.

MR. MITCHELL: I understand, your Honor. Thank you.

Q Mr. Coleman, I show you a page of Exhibit G for identification and direct your attention, sir, to the signature which appears on this page. Do you recognize that to be the signature of Mr. M. W. Saunders?

A Yes.

MR. FELDSHUH: I offer it.

MR. MITCHELL: I have no objection. I take it you will agree that that was produced also from the files of Eon Corporation. And I take it as in the previous exhibit the maginal handwriting is not at the present time being offered along with the exhibit. I take it you are offering it for the typewritten portion and Mr. Saunders' signature, is that correct?

MR. FELDSHUH: That is correct, I am offering the document, your Honor, without any of the legends that may appear.

THE COURT: It is received.

(Defendants' Exhibit G was received in evidence)

MR. FELDSHUH: Your Honor, Defendants' Exhibit F, which isthe letter of July 8, 1971, the opening paragraph is "Enclosed herewith for your signature is a signed agreement to be considered amendment No. 2 of the subject purchase order."

And this Defendants' Exhibit G in evidence is the signed agreement that went along with Exhibit F.

Q Mr. Coleman, was there a meeting in New York City on September 1, 1971, at which you attended and where Mr. Leonard was present?

A When?

Q September 1, 1971. Well, may I show you this letter or this paper and perhaps that will refresh your recollection. You recognize this to be on the letterhead of -- abbreviated letterhead of Continental Motors, without the handwriting. Would you like to look at the second page? Do you see this copy of a signature? Is that your signature, sir?

A What was your question, sir?

Q I say, were you in New York City on September 1, 1971, at a meeting?

A No.

Q Did you know if such a meeting was held among Mr. Saunders, Mr. Anderson and Mr. Leonard?

A I knew that Mr. Leonard and Mr. Anderson met in New York.

Q You don't know whether Mr. Saunders was there?

A I have no knowledge.

Q How do you know that Mr. Anderson and Mr. Leonard had met?

A Mr. Anderson had made arrangements to meet with Mr. Leonard in New York to talk about some of the problems with the language in the contract.

Q When you say contract, do you mean the purchase order, sir?

A Yes.

Q 1257?

A Yes.

Q I ask you on the second page here, is that your handwriting, H. Coleman, 10/9/71?

A Yes.

Q That is your handwriting?

A Yes.

Q What does that indicate you are signing at the bottom of this page? Did you get a copy of this letter?

A I was present when that was put on.

Q Oh, I see. So, therefore, I take it that you got the copy of this letter?

A Yes.

THE COURT: Why did you put it on there?

THE WITNESS: That, sir, was not done at the New York meeting.

THE COURT: Why did you put it on there?

THE WITNESS: I verified that I was in the meeting when all the other remarks were put on here.

THE COURT: I see.

MR. FELDSHUH: I see. All right, thank you very much.

I offer this, please.

THE COURT: You are now offering the handwritten notes in addition?

MR. FELDSHUH: Let me clarify this.

Q In whose handwriting are the handwritten notes on these pages, do you know?

A The notes were made by several people. Mr. Leonard made some of them and my accountant made some of them and Mr. Anderson made some of them.

Q And these notes were all made in your presence?

A Yes.

MR. FELDSHUH: I'm offering it with the handwritten notes.

THE COURT: Where was that meeting?

THE WITNESS: In my office in Walterboro, South Carolina.

THE COURT: Mr. Leonard came to your office?

THE WITNESS: Yes.

MR. FELDSHUH: This, your Honor, is a different meeting from September 1. I want your Honor to understand.

THE COURT: I understand.

MR. MITCHELL: I can even shorten it, if you refer to Defendant's Exhibit C in evidence.

MR. FELDSHUH: You are correct, sorry.

Would your Honor like to have this copy in front of you, this C?

Q Sir, would you tell us what happened at this meeting on Ocrober 9th, 1971?

A Mr. Leonard came to Walterboro. Mr. Anderson came up from Mobile to meet with me and go over this particular letter to where we could finalize the objections and exceptions of the remarks made on it.

Q And one of the objections and the exceptions

of the remarks made upon it had reference to the terms of payment, did it not?

A I would have to check and see, sir. It's a long time.

Q Would you look, please, and I direct your attention --

THE COURT: Paragraph A?

MR. FELDSHUH: Paragraph C on page 2.

A Yes.

Q It was the fact, was it not, that under the proposed terms of paragraph C on page 2 that Teledyne, all Teledyne was concerned with, they wanted 30-day payments no matter what happened, whether American Marc got the government money or not? Is that correct?

A Yes.

Q Sir, did you approve of the proposed change that was made, now referring to subparagraph C on Defendants' Exhibit --

A I approved of the notes that were made on that, yes.

Q By October 9, 1971, there had been no shipments yet of any units by Teledyne to the government; isn't that correct?

A On October 9?

Q By October 9, 1971.

A No.

Q That is correct. The first shipment was down toward the end of November, as I recall your testimony; is that right?

A Yes.

Q I show you Plaintiff's Exhibit 9 in evidence, which is a letter dated October 11, 1971, addressed to you by Mr. Leonard.

THE COURT: Is that the "for the record letter"? You keep on saying for the record. Is that the letter?

MR. FELDSHUH: Yes, that is it.

Q You received that letter, did you not, sir?

A Yes.

Q No question about that?

A No.

Q And this letter had reference to Mr. Saunder's letter back on July 8, 1971, and also had reference to Mr. Anderson's letter, did it not?

THE COUPT: Does it say that on its face?

Q This is 10/9/71.

A It says "Reference to the purchase order 5/12."

Q Yes.

A And 5/13 and on 10/9.

Q That letter, that reference to 10/9 --

A It doesn't reference a letter here, no.

MR. MITCHELL: At the top of page 2 of the letter I think there is a clearer reference that will help you.

Q Looking at the top of page 2 -- do you note that, sir?

A Yes.

Q So it is a fact that Mr. Leonard was writing to you about Mr. Anderson's letter to you of October 9, a few days before?

A Yes.

Q You noticed that Mr. Mitchell kindly called my attention to this second paragraph, and there is talk there about progress payments; is that right, sir?

A Yes.

Q I take it,sir, that a progress payment is an application by a contractor for the government to pay in advance of a delivery of the subject article, is that right, or, better still, what is a progress payment?

A Could I read the rest of this paragraph?

Q Please do. I'm sorry.

You knew that American Marc had received progress payments. Certainly you knew that by October 11, 1971?

A Yes.

Q And you were familiar with the method by which progress payments are made by the government?

A Familiar, but not an expert on it, yes.

Q At any rate,it meant to you, did it not, that during the course of the job and the performance of the contract payments were being made by the government in advance possibly of delivery of merchandise to the government?

A Yes.

Q And that is a fair statement.

MR. FELDSHUH: In that connection, I just request your Honor to note the first paragraph on page 2 when your Honor has the occasion to make reference to it.

(Pause.)

MR. FELDSHUH: Shall I proceed, sir?

THE COURT: This doesn't have anything to do with progress payments from the government to --

MR. FELDSHUH: Not to Teledyne

THE COURT: -- to American Marc.

MR. FELDSHUH: It is to American Marc.

THE COURT: Nothing here about progress payments:

"Again for the record, I told Mr. Anderson we asked for progress payments for TCM in New York."

TCM is what?

MR. FELDSHUH: Teledyne Continental Motors.

THE COURT: Progress payments for Teledyne. Nothing here about progress payments to American Marc.

Q You were aware, however, by October 11, 1971, that progress payments had been made to American Marc in connection with the prime contract?

A Yes.

THE COURT: How did you become aware of that?

THE WITNESS: I think Mr. Leonard had mentioned that they had received progress payments. I'm not quite positive on it, but I think he mentioned that they had received progress payments.

THE COURT: When did he mention that?

THE WITNESS: I don't recall offhand. I think he said they had received progress payments on the first year's procurement.

THE COURT: When did he say that as far as you can recollect?

THE WITNESS: I don't recall, sir.

THE COURT: Was it on the first trip to Los Angeles?

THE WITNESS: I just don't recollect, sir. I'm sorry.

MR. FELDSHUH: I might add, your Honor, that perhaps if your Honor would take a fast look at paragraph 3 on the first page, sir --

THE COURT: Why do you want me to look at that?

MR. FELDSHUH: There was a total awareness by everybody concerned that there had to be some kind of progress payment of some kind or a payment by the government before Teledyne could get paid and that these terms of net 30 days was an indication. We have beentalking about somebody's state of mind.

THE COURT: I am just trying to focus on what you are trying to get me to read. What I read here we don't know. Why did you want me to read it?

MR. FELDSHUH: Only to reinforce what we already know, your Honor.

THE COURT: All right.

MR. FELDSHUH: To indicate that it was in writing.

Q Sir, referring to Plaintiff's Exhibit 11 in evidence, these Teledyne Continental Motors invoices were prepared at Walterboro; is that right?

A Yes.

Q I direct your attention, sir, to the second invoice down and you will note, sir, that the terms there are not 30 days. Do you notice these terms?

A Yes.

Q What did that mean to you?

A Well, it meant that under normal conditions we should get paid our money in 30 days.

Q Is there anything in the invoice which indicates anything abnormal?

A I don't understand your question.

Q Is this invoice unusual in any respect?

A No.

Q It is the usual form of invoice that you had? Isn't it a fact, sir, that --

THE COURT: The question he is asking you is you knew -- he is going the long way around. What he wants to know is when you knew that you were just going to get paid out of payments why did you put in net 30 days when net 30 days didn't have anything to do with it?

THE WITNESS: With past practice we knew or we had knowledge of being able to get payments out of the government in less than 30 days if the paperwork is handled properly, so our invoicing at the same time we sent them the unsigned copy of the DD 250 for them to process was a

method of merely enforcing our hand to get them to go ahead, do the paperwork and get it to the government so the money could be received back and possibly be gotten to us within 30 days.

THE COURT: The point he is making is that under your interpretation of the contract, what you people call the escrow agreement -- he doesn't like to call it the escrow agreement -- it would be tidier if your invoice said "To be paid upon receipt by the government." That is his point.

MR. FELDSHUH: That is right, a continual repetition, your Honor --

THE COURT: It finally got through my head. Hav you got any comment on it?

THE WITNESS: I have no comment, sir.

MR. FELDSHUH: I take exception to your Honor's remark about your Honor's head.

Q You remember being present at a deposition at my office on or about September 21, 1972, at which time I had asked you certain questions; is that right, sir?

A Yes.

MR. FELDSHUH: Your Honor, I am now referring to page 74, line 23.

Q "Were you aware of any interval of time between

cp8 Coleman-cross

Teledyne invoicing Eon and Eon receiving payment from the government?

"A I don't think I understand you.

"Q Sir, what was the procedure employed by Teledyne with regard to invoicing Eon?

"A The procedure as agreed to in the purchase order M1257 was that upon selling the units to the United States Government quality representative which in turn is the signing of a document called the DD 250, after having the government's signature on that document, we sent an unpriced original copy of the DD 250 plus some other copies -- I don't recall the exact amount -- to Mr. Leonard so that Mr. Leonard could then fix the contract price of those units to the DD 250 and distribute it on for payment.

"Our method of getting paid from American Marc was through our invoice for those units stating the number of the DD 250, the date and the bill of lading, et cetera, and the price we were to receive.

"Q Were you to get paid irrespective of when the government paid Eon?

"A According to the document, we were to be paid in 30 days.

"Q 30 days?

"A Yes.

"Q Was that to be from the date of invoice?

"A Yes.

"Q And it had nothing to do with whether Eon got money from the government; is that right, sir?

"A Not according to the document."

THE COURT: Are you asking for any comment on that?

MR. FELDSHUH: I just want your Honor to take note of that testimony. I think it speaks for itself.

THE WITNESS: May I comment? Isn't that what I said a minute ago?

THE COURT: That is what I thought you said.

THE WITNESS: I just want to refresh my memory.

THE COURT: I thought your point was that you accused him of having memorized his testimony.

MR. FELDSHUH: I read it differently.

THE COURT: It seems to me exactly what he just testified.

Q Isn't it a fact that you stated there that Teledyne was to get paid irrespective of the date when Eon got money from the government?

THE COURT: The answer is not according to the document. That is what he just told you.

The question is: Did you know that if the

government didn't pay Eon, Eon wasn't going to pay you because it couldn't; did you know that?

THE WITNESS: You mean if they never got paid they wouldn't pay us? No,I didn't know that.

THE COURT: If the government didn't pay Eon, Eon had no cash to pay you; did you know that?

THE WITNESS: We knew that we were to be paid out of the second year procurement funds and we knew that when they got it we would get it.

THE COURT: And if they didn't get it you wouldn't get it?

THE WITNESS: That is why we put the 30 days in there, to kind of pressure them to finish the paperwork and get it on up there.

Q Suppose, Mr. Coleman, the government never paid Eon. Would you expect to get paid by Eon?

THE COURT: The judges have to worry about that. Manufacturers don't have to worry about that.

MR. FELDSHUH: That was his comment, your Honor. I think we should have an answer to it.

THE COURT: All right. Supposing if the government refused to pay Eon,Eon couldn't pay you. Wasn't your understanding that Eon could not pay you except out of what the government paid them?

THE WITNESS: That is right.

THE COURT: That was your understanding?

THE WITNESS: Yes.

THE COURT: It follows from that if the government didn't pay them they couldn't pay you?

THE WITNESS: Yes.

Q And they would owe you money; is that your testimony?

A No, that is not my testimony, no, sir.

Q But American Marc would owe you even if the government didn'tpay them forever; is that right?

THE COURT: That is correct, and that you can argue makes it not a trust.

As far as I know, there is nothing in the paperwork that exonerates Eon from paying if the government doesn't pay them.

MR. FELDSHUH: Thank you, sir.

Q Sir, you have testified that the 30-day period to which you made reference was a usual period within which Eon,after it got its DD 250 and your invoice, could reasonably expect payment from the government provided Eon did its paperwork; is that right?

A Yes.

Q Looking again to subparagraph C in Mr. Anderson's

letter on page 2 where it appears that these payment terms are firm and deferred action in excess of 30 days could result in suspension of further shipments until payment is received -- I pointed that out to you before.

Now I direct your attention, sir, to the first paragraph on page 3 of Exhibit 9, Plaintiff's Exhibit 9 in evidence. Would you read that,please, to yourself? Have you read it, sir?

A Yes.

Q All right, now, Mr. Leonard is saying in words or substance that this paragraph 8C is out of order, is he not?

A He is disagreeing with it.

MR. MITCHELL: Mr. Feldshuh, is your question as to what the witness' understanding is?

MR. FELDSHUH: No, I want himto read that and I am about to ask him whether he agrees or disagrees with it.

MR. MITCHELL: Mr. Feldshuh should point out whether this is Mr. Leonard's letter.

MR. FELDSHUH: That is what I said to him. Exhibit 9 is Mr. Leonard's letter.

MR. MITCHELL: Your question is how does Mr.Coleman interpret MR.Leonard's words.

MR. FELDSHUH: I am asking him whether he agrees or disagrees with Mr. Leonard's comment in the first paragraph of page 3 of Exhibit 9.

THE COURT: Do you agree it's out of order? Mr. Leonard says quite clearly it's out of order. Do you agree it's out of order?

THE WITNESS: No, I don't agree it's out of order.

Q On all the occasions prior to May of 1972 did

you get a check within 30 days from the date that the government issued a check to Eon?

THE COURT: He doesn't know when the government issued it.

MR. FELDSHUH: That is just my point, your Honor, that he doesn't know and it wasn't in his mind to know, so when he talks about net 30 days that is sheer nonsense.

THE COURT: Net 30 days means from the date of the invoice.

MR. FELDSHUH: Right. He says, too, the reason why it was carried net 30 days was so as to be considtent about looking to the letter of special account and not consider the American Marc are debtors.

THE COURT: He has no claim here that Eon and American Marc are not debtors. There is nothing here to support that. There is a claim to support the claim it's a trustee account or whatever you call it.

MR. FELDSHUH: Special account is the word they use.

THE COURT: I used the word a minute ago and now I have forgotten.

MR. MITCHELL: Escrow account.

Q I show you this and I ask you can you tell

us what this is.

A This is an internal piece of paper of the Teledyne Company which the contract administration writes up related to our business.

Q Does that piece of paper come to you in the usual and regular course of business of the Walterboro plant?

A If it affects the Walterboro plant.

Q And does this piece of paper affect the Walterboro plant?

A Yes, sir.

Q Does it refer to the 1.5 generator?

A Yes.

Q Is this the piece of paper that refers to the performance of this subcontract?

THE COURT: Are you trying to offer it in evidence?

MR. FELDSHUH: Yes.

THE COURT: Why don't you show it to him and maybe it will shortcut all of this.

MR. MITCHELL: I have no objection.

MR. FELDSHUH: Your Honor, for the moment can we have this deemed marked?

(Defendants' Exhibit H was received in

evidence)

MR. WEINBERGER: For convenience it's called an in-house sales order of Teledyne.

Q Sir, I direct your attention to the 6th page of Defendant's Exhibit H in evidence. You will note there it says "payment terms." Is that right, sir?

A Yes, it does.

Q With regard to those payment terms I ask you, sir, now referring you to subparagraph 1A, is there any reference there to anything more than that the payment is due from Eon Marc 30 days from thedate of invoice? The fact is there is no reference there to the government paying American Marc any money, is that correct?

THE COURT: What are you talking about?

MR. FELDSHUH: Terms of payment, 1A.

THE COURT: I am on the wrong page. What page?

MR. FELDSHUH: It looks like the 6th page, if I may approach the bench, your Honor.

THE WITNESS: Yes, page 6, sir.

MR. FELDSHUH: Undrer "payment terms," sir.

THE COURT: What is your question?

Q The question is this: Where unde the

payment terms is there any term that Teledyne is to be paid within 30 days after American Marc receives a payment from the government?

THE COURT: There never has been such an assertion.

MR. FELDSHUH: Then I am mishearing this, your Honor.

THE COURT: You certainly are. He has said a dozen times that the 30 days comes from the time of the sending of the invoice.

MR. FELDSHUH: Right. That is what this says.

THE COURT: Thatis what he says. There never has been an assertion, no one has said from the day I got on to this case until now, and I doubt if it will be said in the next 30 years this case is apparently going to take, that the 30 days starts to run when American Marc gets the money from the government. There never has been a suggestion of that except in your questions which are always asked in the negative. Will you stop asking those questions?

MR. FELDSHUH: All right.

Q In accordance with those payment terms, was Eon to get money from the government before payment?

Answer yes or no.

THE COURT: Why ask him? I can see nothing there about Eon getting money from the government. That is on the next page.

MR. FELDSHUH: I take it, your Honor, that the answer to that is no.

THE COURT: It's an improper question. The exhibit speaks for itself.

Q With regard to the payment terms on the next page --

MR. FELDSHUH: I will withdraw the question.

THE COURT: It's in evidence. These arguments you are trying to make in the form of questions to him are perfectly appropriate to make to me. If you want to ask him a question "Why is it this way," ask him. Otherwise get on to something else.

MR. FELDSHUH: I think we asked the question before.

THE COURT: I think so, too.

Q Mr. Coleman, you testified on your direct examination that the government deducted from the amount of payments that were made directly to Teledyne certain progress payments that were made to American Marc on

account of inventory. Do you remember your testimony in that regard?

MR. MITCHELL: Mr. Feldshuh, could you speak up a little more clearly? I didn't hear that question. May I have that read, please?

MR. FELDSHUH: Sorry.

THE COURT: My recollection is he didn't so testify. Counsel so stated in response to one of the questions I asked with respect to the purpose of the testimony.

That is my recollection. I could be wrong on that.

MR. MITCHELL: May I have your last question read back, please, unless you would like to withdraw it and pose another one.

MR. FELDSHUH: I will withdraw it.

Q With regard to payments made by the government directly to Teledyne --

THE COURT: Teledyne?

MR. FELDSHUH: Yes.

MR. MITCHELL: Were no payments made directly to Teledyne?

THE COURT: There were never payments made directly to Teledyne.

MR. FELDSHUH: I thought after the breach of contract Teledyne made a special deal with the government.

MR. MITCHELL: You are talking about an entirely different area. You are talking about subsequent to the termination of hte contract.

MR. FELDSHUH: That's right.

MR. MITCHELL: That didn't indicate that to me.

THE COURT: Nor to me.

MR. FELDSHUH: Your Honor got thepoint, though.

THE COURT: No.

Q Were there any payments made by the government other than the payments to Teledyne other than those made after the termination of the contract?

A While I was in the employment of Teledyne, no.

THE COURT: I didn't understand there was any contention there were any.

MR. FELDSHUH: There was a contention here, your Honor, in connection with the so-called damages that were sustained here that when Teledyne received money from the government the question came up as to mitigation of damages and so on.

THE COURT: I thought we were going to leave that and you could see if you could work out this mitigation problem among yourselves.

MR. FELDSHUH: I am satisfied to do that, your Honor.

THE COURT: I thoughtyou had agreed to do that.

MR. FELDSHUH: All right, I am satisfied to do that, your Honor.

THE COURT: If you people are paid any reasonable fees you will use up more time than the differences involved.

MR. FELDSHUH: That is a general complaint about lawyers, your Honor. I heard that numerous times.

MR. MITCHELL: I never have, your Honor.

Q Sir, your last meeting with Mr. Anton was in June of 1972?

A Yes.

Q June 29?

A Yes.

Q On or about that date. Mr. Kotts was present at that time?

A Yes.

Q Was he present throughout the entire

conversation between you and Mr. Anton?

A Yes.

Q As I understood your testimony Mr. Anton said to you that the money was taken by board decision to pay other debts; is that right?

A Yes.

Q And the words that were used were "other debts"?

A Yes.

Q Was there any statement with regard to the money being appropriated by any member of the board of directors?

A Can I hear your question again, sir?

Q All right. Was the money used for any other purpose -- did Mr. Anton say that the money was used for any other purpose than the payment of other debts?

A No.

MR. FELDSHUH: No further questions.

MR. MITCHELL: Your Honor, I have no questions on redirect.

THE COURT: I take it you have nothing that could be concluded in 15 minutes?

MR. MITCHELL: I think not, your Honor. I

think we can probably start in tomorrow and I think we can finish off the testimony of witnesses we can have at this session and then I think we'll probably arrange future arrangements.

THE COURT: See you tomorrow at 10 then.

(Adjourned to July 18, 1974 at 10 a.m.)

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TELEDYNE INDUSTRIES, INC.,
Plaintiff,
vs.
EON CORP., ODIF PODELL, SIMON SRYBNIK, NICHOLAS ANTON, SAUL WALLER and KERNS MANUFACTURING CORP.,
Defendants.

72 Civ. 3261

New York, July 18, 1974;
10.15 A.M.

Trial resumed.

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MR. MITCHELL: Your Honor, I have had occasion to speak briefly with Mr. Feldshuh this morning on again some administrative matters of preparing this trial for resumption in the fall when your Honor can take it, and also with regard to the introduction in evidence of certain portions of the depositions.

I believe your Honor indicated yesterday that it would be acceptable to you for us to more or less cut and paste the actual deposition pages that each of us intends to read on his own case and submit the same to you. Mr. Feldshuh and I, without working out any specific time schedule, have agreed that during the month of August, when the courtwill not sit, to submit in roughly the following order:

Plaintiff will submit as soon as possible to the Court their cut and pasted copies of the depositions with

the evidence to be read or the testimony to be read in evidence.

Some time thereafter the attorneys for the defendants will submit a written list of objections to such portions of the materials submitted to your Honor that they wish to object to as well as the additional portions of the depositions that they would like to have read in under Rule 32(a)(4), and at approximately the same time attorneys for the defendants will submit to the Court portions of other depositions that they wish to be read in on their main case.

Thereafter, counsel for the plaintiff will file the same list of objections as well as the additional portions of the transcript, and I believe at some time, at your Honor's convenience, if your Honor feels inclined to grant or sustain any of the proposed objections, we might set up some hearing mechanism and work that out.

THE COURT: We can have a conference during some other trial, either before or after, to dispose of that kind of problem.

MR. MITCHELL: I think that could be disposed of rather promptly.

THE COURT: So the objective would be that when we resume the hearings we will have disposed of all objections

to the transcripts and I will have read them. Then we will resume the hearings, assuming that I remember what has gone on here and remember what you have submitted.

MR. MITCHELL: That is correct, your Honor.

As far as the exhibits are concerned which were identified at the deposition, it is, I believe, Mr. Feldshuh's and my intent not necessarily to submit or offer into evidence all the various exhibits --

THE COURT: Only offer what you think is relevant.

MR. MITCHELL: Yes, but I think we will each select from the portion of the depositions on our own cases, submit that to the Court and offer them into evidence, and I think if there are any subsequent objections that might be handled in the same way. But certainly each of us will make available to the other copies, if they don't already have them. So I think, again, this can all be ironed out.

THE COURT: Try to aim at having all of that in my hands by Labor Day.

MR. MITCHELL: Fine.

THE COURT: I will go over it as fast as I can and call you in for a hearing.

MR. MITCHELL: Yes. I think that would be a

good way of disposing of it, your Honor.

MR. FELDSHUH: Yes.

MR. MITCHELL: Can we do anything about the subpoena on Mr. Anton, Mr. Feldshuh?

As I indicated to your Honor earlier, I have a subpoena ad testificandum and duces tecum outstanding to the president of Eon Corporation, Mr. Anton. I would like, if possible, since we don't know when the trial will be resumed in the fall and since a portion of his deposition testimony will be entered into evidence -- I don't know what portion yet because I don't know what the objections will be -- I think it will be necessary to have him called again as a witness on our case and I would like, if possible, to avoid having to serve another subpoena on Mr. Anton. I wonder if Mr. Feldshuh would accommodate me by some agreement as to producing him.

MR. FELDSHUH: May I suggest this, your Honor: After I receive the material from Mr. Mitchell and submit my material, I will then sit down with Mr. Mitchell and we will determine at that time whether the submissions as made to your Honor cover our respective areas, and if they do possibly Mr. Anton need not be subject to the subpoena.

I did, when the subpoena was served, have reservations as to its propriety and had it been tested I

would have moved to the Court.

THE COURT: If Mr. Anton is a party and his presence is required he will be here. There is no question about that, is there?

MR. FELDSHUH: If he can be here he will be here. If he chooses or feels it is not essential that he be here, if he elects not to be here --

THE COURT: If I direct him to be here he will be here, I assume.

MR. FELDSHUH: If your Honor will direct him to be here, then, of course, I will have to produce him.

THE COURT: If he is required I will direct you to produce him.

MR. FELDSHUH: I think our meeting will straighten that out.

MR. MITCHELL: Mr. Feldshuh and I will try to come to some resolution at the subsequent sale of generator sets by Teledyne. We will do our best to try and get together on the underlying facts on this to avoid going on.

MR. FELDSHUH: I take it, sir, that with regard to my talks with Mr. Mitchell, if I should acquaint him with the fact that I would desire an important witness in the employ of Teledyne, presently in the employ of Teledyne, I will communicate that fact to Mr. Mitchell and

ask that that gentleman be produced, but I assure your Honor I am not going to ask anybody to be produced unless I believe it is certainly essential to the defendants' case.

I do agree to everything that Mr. Mitchell has said so far.

THE COURT: Fine.

MR. MITCHELL: Your Honor, for today the Court will hear two attorney witnesses, and I will call Mr. Kotts as the first witness today.

hprl

EARL FREDERICK KOTTS, called as a witness by the plaintiff, being first duly sworn, testified as follows:

Q Would you state your present address, Mr. Kotts?

A 388 Lincoln Road, Gross Point, Michigan.

Q You are an attorney at law, are you not?

A That is correct.

Q When were you admitted to the bar as an attorney at law?

A I was admitted in Michigan in 1953 and California about 1963 or '64.

Q And since the date of your first admission, have you been working as an attorney to the present date?

A Yes, I have.

Q By whom are you presently employed?

A Teledyne Continental Motors.

Q At what time did you first enter the employment of Teledyne Continental Motors or any predecessor company?

A I went to what was then the Continental Motors Corporation in 1966.

Q And that subsequently became a division, did

it not, of Teledyne Industries, Inc., the plaintiff inthis action?

A Correct.

Q What is your present position with Teledyne Continental Motors?

A I am counsel for the Teledyne Continental Motors Division.

Q Was this your position in 1971, '72?

A Yes.

Q Mr. Kotts, when did you first have occasion to hear of a prospective subcontract between Teledyne Continental Motors and the American Marc Division of Eon Corporation regarding certain 1.5 kw generator sets?

A That was the evening of May 10, 1971.

Q Would you describe how you came to be apprised of this situation?

A I received a call from Harold Rouse, who was in Los Angeles indicating he wanted to make an arrangement with American Marc, and spelling out some of the basics of the arrangement, and he asked me to draft up something for him that he could present the next day. This was for the purchase of certain tooling and parts for generator sets.

Q Did he have occasion to discuss with you a

purchase order or prospective purchase order to Teledyne Continental Motors?

A Yes. He said there would be a purchase order arrangement also, and he reflected the fact that he had talked to Gene Lewis, our vice president of finance at Teledyne Continental and said Gene had a Dunn & Bradstreet report, and that American Marc and the Eon Corporation were in somewhat a shaky financial situation. Gene had suggested setting up a particular kind of bank account to protect payment to Continental and I stated to Mr. Rouse that if he set up some special account or account which could not be drawn from by others than Teledyne Continental, this would be satisfactory.

Q And subsequent to this telephone conversation, did you have any further occasion to talk to Mr. Rouse about setting up of a special bank account?

A No. I think that was my only conversation with Mr. Rouse.

THE COURT: On that subject?

THE WITNESS: On thatsubject, yes, I'm sorry.

Q Was there anything else discussed, on any other subject during that first telephone conversation with Mr. Rouse?

A I think probably at that time he may have

talked about a finder's fee to a Mr. Walper.

Q Do you presently recall what, if anything, was said on that subject?

A I think he said that American Marc wanted Mr. Walper to have a finder's fee and they were going to make out an arrangement on a certain number of dollars per engine should the arrangement go through.

Q And was there anything else that you recollect took place during that telephone conversation?

A He requested me to call him the following day. He said this was an urgent matter and that they wanted to close, American Marc was being closed down as a manufacturing facility and wanted me to react promptly.

THE COURT: Did he tell you who he was negotiating with, at American Marc?

THE WITNESS: I think he mentioned the name Jim Leonard at that point, your Honor.

THE COURT: Did he say anything to you about what Jim Leonard had said to him on the subject of this bank account?

THE WITNESS: No.

Q And was there any subsequent telephone conversation had between yourself and Mr. Rouse?

A Yes. We talked the following day and I had

prepared an agreement for the sale by American Marc and the purchase by Teledyne Continental of tooling and parts and that was contingent upon a purchase order for the assembly of the generator sets, going through to Teledyne Continental.

Q And did you dictate this more or less to him on the phone?

A Yes. I wrote it up in longhand and dictated it to Mr. Rouse. I believe at that point he was at the International Hotel in Los Angeles.

Q And did any other topic arise between yourself and Mr. Rouse on the occasion of the second telephone call?

A Yes. He discussed a purchase order, and I asked him for the conditions of what American Marc was proposing, and there was a mixture of government terms and commercial terms, fairly complex and I told him this was very difficult to try to do over the telephone. I finally drafted up some language to add, relating to warranties and terminations and told him if he had to sign a purchase order it should be left fairly open for a better examination of terms and conditions by our contract administration people.

Q When was the date of this second telephone

telephone conversation with Mr. Rouse?

A That would have been May 11, 1971.

Q What time of day, if you recall?

A It probably started about 11 o'clock in the morning, Detroit time, and proceeded through the day. I think there were two calls on that day.

Q Is the testimony you have just given related to the first telephone call or the second telephone call during that day, or both?

A Both.

Q Subsequent to the second telephone call of Mr. Rouse on May 11, did you have any further connection with the proposed subcontract or the inventory agreement within the next succeeding months?

A No. At that point I pretty much phased out of it and I think I went to our contract administration group.

THE COURT: You were general counsel?

THE WITNESS: Yes, your Honor.

THE COURT: But you have other people in contract administration?

THE WITNESS: Yes, we have people that specialize in that field.

Q Was there another occasion in which the

subject of the subcontract or the arrangement with Teledyne and American Marc Division of Eon Corporation came to your attention?

A Yes. That was on June 28, 1972.

Q Would you describe for the Court how that came about?

A Yes. Mr. Richardson, whom I report to, called me into his office and said there was a problem down at Walterboro with the Eon contract and that we were substantially short of money from that contract, that I would receive a call from Homer Coleman and I should arrange to go to New York with Mr. Coleman.

Q Did Mr. Coleman later contact you?

A Yes, he did and I agreed to meet him in New York for a meeting the following day.

Q And what happened after that, with reference to this meeting?

A I met Mr. Coleman at the airport, and we went to the New York Hilton Hotel.

Q Are you referring to the airport in New York or in Detroit?

A In New York. And, we had a meeting on June 29, 1972, at --

Q Approximately what time of the day was this?

A I believe that was in the morning.

Q Where was this meeting?

A That was at the Eon Corporation offices, I believe in Brooklyn.

Q Who was present at this meeting?

A Mr. Anton, Mr. Coleman and myself.

Q From time to time, was anybody else involved in the meeting or was it just the three of you?

A Just the three of us. I met one or two other people there but the meeting was conducted among the three of us.

Q Approximately how long did the meeting last in terms of time?

A I would say an hour to two hours.

Q And as best you can recollect, what was said by whom during the course of this meeting?

MR. FELDSHUH: May I have a short voir dire, your Honor, with regard to this testimony?

THE COURT: Why do you want a voir dire?

MR. FELDSHUH: Because if this talk was the result of a settlement discussion of the issue involved, manifestly it is incompetent, if it is part and parcel of a settlement discussion of any dispute between Teledyne and Eon, and that's the only purpose for the

voir dire.

THE COURT: I don't think that is a proper objection. The purpose of the meeting is to show knowledge.

MR. FELDSHUH: Your Honor, I respectfully submit that in the course of a meeting comments, the thrust --

THE COURT: Not if the purpose is to show knowledge.

MR. FELDSHUH: I disagree with your Honor.

THE COURT: If the purpose is to establish the truth of a position, then you would have a point. I take it that is not the point.

MR. MITCHELL: That is correct, your Honor.

MR. FELDSHUH: I respectfully disagree with your Honor.

THE COURT: You have an exception.

MR. MITCHELL: I may point out, your Honor, that is prior to the initiation of any litigation proceedings in this matter.

THE COURT: That is another problem.

MR. MITCHELL: Would you read the question.

(Question read)

A Mr. Coleman explained to Mr. Anton the purpose

of this meeting was to find out what happened to the money that was due Teledyne Continental Motors. Mr. Anton asked us if we knew the history of the corporation, and --

Q Which corporation?

A Eon Corporation, and explained the various division and the general arrangements of Eon Corporation. After that, I said that -- really what I was interested in was there was supposed to have been a particular kind of bank account set up for Teledyne Continental Motors to be paid. It was my understanding that money had been taken from that fund improperly, and I wanted to know where it went and how this came about.

Q This is what you said to Mr. Anton?

A This is what I stated to Mr. Anton.

Q What was his reply?

A He said he recognized this nd he was sorry about it, but he didn't see any purpose in pursuing what had gone on in the past, that we should concentrate on the present, and I asked again what had happened to that money and he said it was used to pay other bills, that if he had not done that, if the corporation had not done that, the corporation had not done that, the corporation would have failed and everybody would have been worse off. I

asked him if the officers and directors of Eon Corporation knew about this. He said yes, the directors had decided to do this and everybody knew.

He then said that possibly we might be able to work something out on a stock arrangement, and wanted to explore and see if there was some situation that could be worked out proceeding from the present into the future and not to concentrate on the past.

Q At that time did you know who the officers and directors of Eon Corporation were?

A I didn't, until he gave me an annual report. I think it was for 1971, and I looked at the officers and directors on that document.

Q I take it you are referring to an Eon Corporation annual report?

A Eon Corporation annual report.

Q To the best of yourrecollection, did anything else occur during that meeting?

MR. FELDSHUH: May I have that question?

(Question read)

A Mr. Coleman talked to Mr. Anton about numbers and this sort of thing that he was familiar with, how much money was due from Teledyne Continental from Eon, and I think that was about the extent of it before we

returned to the hotel.

Q Who returned to the hotel?

A Mr. Coleman and myself.

THE COURT: Not Mr. Anton?

THE WITNESS: Not Mr. Anton. I believe Mr. Anton drove us to the hotel.

Q Which hotel was this?

A This was the New York Hilton.

Q Was there any arrangement at the time the meeting broke up at the date of June 29, for a further meeting? How was it left?

A It was left open. We would take these messages back to our management and be back in touch with Mr. Anton.

Q When you say take these messages back, what are you referring to?

A I am talking about the fact that it was established the money was going out of the bank account, that Mr. Anton wanted to propose some sort of an arrangement for Teledyne Continental to have stock in Eon Corporation.

Q Do you recall any discussion during that meeting as to the amount of money left in the Bank of America bank account?

A I believe there was some statement by Mr. Anton there was about $10,000 left in that account. When I questioned him about the account and tried to obtain further details about it, he said that the records were in California, and that this had previously been under the control of Mr. Leonard but that control had now been transferred to New York and to Mr. Anton, and that he still needed the documents from the West Coast.

Q And after you and Mr. Coleman returned to the hotel room, did anything else occur with reference to the subcontract?

A Yes. Mr. Coleman received a call from James Leonard.

Q Were you present in the room at this time?

A Yes, I believe we were both in Mr. Coleman's room at that time. And, Mr. Coleman talked to Mr. Leonard about the meeting he had had at Eon Corporation.

Q You didn't hear anything that Mr. Leonard said at this time, did you?

A No, I didn't. I was not on the telephone. And, I signaled to Mr. Coleman that I wished to talk to Mr. Leonard when he was through, and Mr. Leonard had asked Mr. Coleman who the person was that had been with him to see Mr. Anton and Mr. Coleman explained that I was counsel

for Teledyne Continental Motors.

When they were finished I did get on the telephone and talked to Mr. Leonard and he indicated he was sorry we had to meet under these circumstances and I said I also was very sorry because apparently because there was a substantial amount of money behind, and I asked him about the trust account that had been set up for Teledyne Continental Motors to be paid when the government had paid Eon.

THE COURT: What words did you use asking him that, as far as you remember?

THE WITNESS: I think I asked him what happened to that special bank account that was supposed to protect the funds for Teledyne Continental Motors when the money was paid by the government.

THE COURT: You didn't use the word "turst"?

THE WITNESS: I probably didn't use that precise word, your Honor.

And, he said he didn't like talking to attorneys and I said well, I -- he said those records were in New York, and I reflected the fact that I talked to Mr. Anton, who had said that the records were in California and I said we seem to be moving back and forth and I need to know some definite information about those

bank accounts and what happened to that money. He again reflected the fact that he didn't like to talk to attorneys. I asked him if he had had control of the account at one time, and had written any checks and he said that he did.

I said "Can you give me some information about what happened in the bank account while you had control of it?"

And he said he didn't think he should have to tell me and I said, "I will get that answer, Mr. Leonard, either in court of in this telephone conversation."

He became very irate at that point and said "You're not dealing with an amateur. I'm 55 years old and I'm a professional." He said "You're not going to stab me in the ass."

He said that he could disappear so that I wouldn't find him and I said "You may try to disappear but I will find you"and I said at that point "Do you think there is anything unfair about my question, I'm a man trying to find out what happened to some funds due us."

And he said he would not answer upon advice of his attorney, and he said "You're going to have to submit that question in writing."

I said "If I submit the question in writing,

will you then give me that answer?"

He said "I wouldn't give you any answers without talking to my attorney."

I said "This appears to be as far as we could go in this converation" and hung up.

THE COURT: When you said you were trying to find out what happened to this special account that was supposed to protect your company what did he say?

THE WITNESS: His answer at that point was "I don't know because the records are in New York."

THE COURT: He didn't make any comment on your phrase about protecting your company?

THE WITNESS: No.

Q Mr. Kotts, had you relayed your telephone number or the fact that you were staying at the Hilton Hotel to Mr. Leonard at any time prior to his call?

A No. I had never met Mr. Leonard or communicated with him before that telephone call nor have I since then.

Q To your knowledge, or in your presence, had Mr. Coleman informed Mr. Leonard that he was staying at the Hilton Hotel on that date?

A No. As I recall it, I think Homer Coleman was a little surprised at Mr. Leonard [illegible] at the --

THE COURT: Leonard had called you?

THE WITNESS: Called Mr. Coleman.

Q Subsequent to this date, June 29, did you have any further connection with the problem between Teledyne Continental Motors and Eon?

A I received a call from a Mr. Anton, on July 5th.

Q 1972?

A 1972. He had asked me had any progress been made, what was the position of Mr. Richardson, my superior, could we make some arrangement and I told him I had reported it to Mr. Richardson.

THE COURT: That was Mr. Anton you had a conversation with?

THE WITNESS: He called me, sir, yes.

Q Where were you when he called you?

A I was in Detroit. He said his whole life's effort, his career was at stake and he had to pursue every possible avenue of keeping this going. I said excuse me a moment and I went and talked to Mr. Richardson and said this is Mr. Anton, do you care to talk to him or will you consider any arrangement other than being paid what to do and he said absolutely not, and I continued the conversation with Mr. Anton, and then he said to speak to

Mr. Richardson.

I explained to him when I had excused myself before in the telephone conversation, I had talked to Mr. Richardson and I didn't want to hold out any hope whatsoever of any solution in the payment of money. He expressed his appreciation to my listening to him and said he didn't understand their philosophy of going back and keep pressing that issue when we should talk aboutthe present, how to solve the problem and keep Eon in business.

Q During the course of this telephone conversation with Mr. Anton was there any discussion or mention of the board of directors of Eon Corporation?

A I asked him again about the bank account decision. I said this belonged to Teledyne and it was taken out of the account and you indicated that the board of directors had cognisance of this and approved it and his answer was yes, that was true but there was no sense going back plowing old ground again.

I had asked him -- in the meantime we had done some checking about who appeared to be maybe the principal people of this and one was Mr. Simon Srybnik, and I asked him if he was a director and he said yes.

I asked him had they an executive committee

and he stated at that time that they had and I asked him if Mr. Srybnik was on it and he said yes, and I said "Can you tell me what time he was on the executive committee"and he said at different times.

Q Was there any further discussion about the executive committee?

A No. It was very brief.

THE COURT: When you said to him this was your money, Teledyne's money, what did he say to that?

THE WITNESS: He said he recognized this and he was sorry about it, that this thing had happened, but he says there was no use continuing to pursue that, we should try to solve our present problems.

MR. MITCHELL: I have no further questions, your Honor.

THE COURT: Do you want a short recess to organize yourself?

MR. FELDSHUH: Thank you, sir.

CROSS-EXAMINATION

BY MR. FELDSHUH:

Q Mr. Kotts, you testified you met Mr. Coleman on June 28, 1972, in New York at the airport?

A I believe that is correct, yes, sir.

Q And from the airport you proceeded in the company of Mr. Coleman to the Hilton Hotel in the city here?

A I believe that is correct.

Q During the course of that journey or thereafter did Mr. Coleman discuss with you a letter written by Mr. Leonard, which letter is dated May 25, 1971?

A I don't recall that he did.

Q Did he tell you that Mr. Leonard had written anything concerning a special account and its use?

THE COURT: Are you trying to narrow him down to this particular conversation?

MR. FELDSHUH: Yes, your Honor.

THE COURT: Is it material whether this conversation took place in this taxi ride?

MR. FELDSHUH: Not necessarily.

THE COURT: Did you ever have a conversation with him about this letter?

THE WITNESS: I had a conversation at some time with somebody about the correspondence.

Q Can you identify the "somebody"?

A No. I know that we eventually got copies of correspondence for our files.

Q Was that after the litigation started?

A No, it was probably before the litigation.

Q How soon before?

A I can't tell you how soon. Quite a bit before.

Q You weren't in touch with this matter until you

spoke with Mr. Richardson on or about June 28, 1972?

A That is correct.

Q So that it is the fact --

THE COURT: He was in touch with it to the extent that he talked to Mr. Rouse.

MR. FELDSHUH: Way back in May of 1971.

Q So that it is a fair statement, is it not, that between the episode in May, 1971, to on or about June 28, 1972, you were not in touch with this Eon subcontract?

A That is pretty much correct, yes, sir.

Q Did Mr. Coleman have any files with him when he met you in New York on the 28th of June, 1972?

A I don't recall any.

Q Did he show you any papers at all during the occasion of that visit?

A I don't think he did.

Q Sir, when Mr. Rouse returned to Michigan did he present to you a copy of the purchase order, referring to Plaintiff's Exhibit 3 in evidence?

A Some place along the line --

THE COURT: When?

Q In May of 1971 when Mr. Rouse returned to Michigan.

THE COURT: In May of 1971 we are on now?

MR. FELDSHUH: Yes, your Honor.

THE COURT: Okay.

Q Did Mr.Rouse show you Plaintiff's Exhibit 3?

A We eventually received a copy of the purchase order. I did, yes.

Q From Mr. Rouse?

A I believe it was from Mr. Rouse.

Q I direct your attention, sir,to the last page of Plaintiff's Exhibit 3. You testified on your direct examination that you spoke with Mr. Rouse about the purchase order and dictated something to him about it?

A Yes.

Q Was the something that you dictated what appears to be on the last page of Exhibit 3?

A I believe that that is what I dictated, yes, as far as the purchase order went.

Q So that the material that appears -- and I now quote from the last page:

"Attachment 'Vendor Terms and Conditions' are duly part of this purchase order" --

So everything on the rest of this page, including that heading, was dictated by you?

A I don't think that heading was dictated to me.

THE COUPT: You mean "by me"?

THE WITNESS: "By me."

THE COURT: You said "To me."

THE WITNESS: I'm sorry. I don't think that was dictated by me. I think starting with Article No. 2 down was probably my language.

Q So, in addition to dictating to Mr. Rouse the agreement with regard to tooling and parts, as you testified, you did take up the subject matter of the purchase order?

A Yes.

Q With regard to the words appearing in Articles 4, 7 and 11 -- you see those words in the last paragraph of this exhibit?

A Yes.

Q Articles 4, 7and 11 refer, do they not, to the terms,the printed terms appearing upon the reverse side of the first page of the purchase order; is that correct?

A I would say that is likely true, yes.

Q When you dictated that to Mr. Rouse --

THE COURT: May I see that?

MR. FELDSHUH: Here, your Honor. That is the reverse side of this page. Look at the very last paragraph on it, your Honor.

THE COURT: You dictated Articles 4, 7 and 11?

THE WITNESS: Yes. I believe that is my dictation also.

Q And you dictated that to Mr. Rouse?

A Yes.

Q And it was in the course of dictating that to Mr. Rouse that you asked Mr. Rouse, did you not, to look at Articles 4,7 and 11 on the reverse side?

A Yes, I think we were trying to discuss on the telephone these terms and conditions which I found pretty confusing trying to do it by long-distance telephone.

Q I'm sure you did,but, at any rate, it was the terms and conditions that were on the reverse side. Did Mr. Rouse read Article 4 to you and Article 7 and 11?

A I'm sure he would have either read them to me or given me the substance of them. He probably read them to me.

Q You testified that you spoke with Mr. Rouse twice, I believe you said.

A I think we had two calls on the 11th.

Q During the course of that day, I see. So it is the fact that in the course of your talk with Mr. Rouse and your making a judgment as to how this attachment should be worded that he discussed with you the terms and conditions on the reverse side?

A That is correct.

cp6 Kotts-cross

Q When Mr. Rouse said to you that Mr. Lewis, I believe you said --

A Yes.

Q -- suggested a special account with regard to the payment of moneys, did Mr. Rouse point out to you that the terms of payment appearing upon the first page were net 30 days? Did he say that to you in words or substance? Just look at it, please. It is right here, sir.

A I see. I think it is quite likely that that was pointed out.

Q How long did the first conversation take, sir?

A This is the one in May, on May 10th or 11th?

Q I'm sorry, sir. I am now addressing you to the time when you started to dictate over the telephone to Mr. Rouse.

A That was May 11th. I would say that was a substantial period of time. It was more than a five or ten-minute conversation.

Q Because he was writing all of this considerable amount down?

A He was writing and I was trying to find out more about the situation.

THE COURT: That isn't a very satisfactory way to practice law.

THE WITNESS: Very true.

Q Did Teledyne have any lawyers in Los Angeles in May of 1971, if you know?

A I would assume they had them at the corporate office.

Q Were the corporate offices of Teledyne in Los Angeles?

A Yes.

Q Is that the parent --

A That is the parent corporation.

Q Had you ever been in touch with that corporate office from the point of view of the communications between the various subsidiaries of the parent and the subsidiaries coming forward and seeking aid from the people in the corporate office in Los Angeles?

MR. MITCHELL: May I have the question read back? I didn't hear it all.

MR. FELDSHUH: I will withdraw it.

Q Was it the practice with regard to communications between these various subsidiaries of Teledyne for those subsidiaries to seek out aid and assistance from the parent corporation in Los Angeles?

MR. MITCHELL: Will you put a time frame on your question?

Q Now referring to 1971.

THE COURT: To this period of 1971?

MR. FELDSHUH: 1971.

A From a legal standpoint we had policy guidelines from the corporate legal office, but were given a fair amount of autonomy as far as the division detail problems were concerned.

Q Would you know if Mr. Rouse was aware of this kind of arrangement as the head of five plants throughout the United States, as he testified?

A I'm certain he knew they had a corporate office in Los Angeles.

THE COURT: What is puzzling me, as it is puzzling counsel, is why didn't you get your California lawyer to handle this instead of trying to do it over the phone?

THE WITNESS: I can't say. I don't know. In hindsight I wish I had, sir.

Q Would you kindly look at Plaintiff's Exhibit 5, which is the agreement which is the inventory and tooling agreement.

A Yes.

Q I take it, sir, now that you have looked at this agreement, that the general language of this agreement was dictated by you to Mr. Rouse?

A That is correct.

Q And no doubt that is what took a considerable amount of time, to take this over the telephone?

A Yes.

THE COURT: If contributory negligence were a defense you'd be in fine shape.

MR. FELDSHUH: Maybe, your Honor, when the time comes in our information, I do hope, your Honor, I may be able to persuade you in that direction. I certainly thank your Honor for giving me your Honor's insight in that direction.

Q Was Mr. Lewis the financial officer of the TCM Division; is that how that worked?

A Yes, at that point I believe he was vice-president of Finance.

Q Was he located wherever TCM headquarters were?

A He was located in Muskegon, Michigan, where we had a large plant.

Q You were located there, weren't you?

A No, I was in Detroit.

Q How far is Muskegon from Detroit?

A It is roughly 200 miles.

Q I thought it was next door. I'm not familiar with the geography of Michigan.

cp10 Kotts-cross

Did you have a discussion with Mr. Lewis after you had spoken to Mr. Rouse concerning this financial arrangement?

A I dont recall calling him on this specific subject. I certainly talked to him on other things.

Q Now, sir, you testified that there was some talk about a finder's fee. Do you recall your testimony, sir?

A Yes.

Q You testified as to the name Walper and said you may have talked about a finder's fee to Mr. Walper; is that correct?

A Correct.

Q Was that specific name, Mr. Walper, mentioned to you in that telephone conversation with Mr. Rouse on May 10, 1971?

A I believe it was.

Q As I recall your testimony, you testified that Mr. Rouse said to you American Marc wanted Walper to have a finder's fee. Do you recall your testimony, sir?

A Yes.

Q While you were speaking to Mr. Rouse on this subject, did Mr. Rouse tell you that on Friday, May 7, 1971, Mr. Walper and he had a conversation with regard to the

A Yes, that is correct.

THE COURT: He got the $5 whether he consulted or not. You do not know whether he consulted?

THE WITNESS: That is correct.

Q In the context of this kind of situation a finder need not render consulting services in order to earn his money; isn't that right?

A I would guess in the strict sense of finder's fee that is correct.

THE COURT: How did the consulting service happen to get into the contract?

THE WITNESS: Very likely we put it in there in the event that we did need him in the situation someway or other, so that he at least would be obligated to do it.

Q You don't know of your own knowledge, do you, Mr. Kotts, whether Mr. Walper had the qualifications to render consulting services with regard to the 1.5 kilowatt generator sets?

A No, I do not know.

THE COURT: Were those your words "consulting services"?

THE WITNESS: I think they probably were.

Q Sir, after May, 1971, did you have knowledge as to whether Mr. Rouse and Mr. Leonard were in touch with each

Q Addressing you to the contents of this letter, you will note, sir, that it is a quotation by Teledyne to sell to American Marc 1.5 kilowatt generator sets, do you not, sir?

A Yes, sir.

Q And you see that it also is a quotation setting forth a unit price of $334.50?

A Yes.

Q Now, sir,looking down below that, there is the following quote with regard to the $334.50:

"Included in the above price is $3.50 per unit awarded for your consulting fee."

This is a letter addressed to Mr. M.J. Leonard.

Sir, with regard to the payment of a consulting fee in the context as used there, you understood that to be, did you not, the same thing as a finder's fee?

A I don't understand it now as being directed to Mr. Leonard for his consulting fee.

Q You mean American Marc would purchase something and then would get paid as a division of Eon for consultation on the buying of an article from [illegible]?

A The consultation and finder's fee, as we discussed it -- the only one that I was aware of, was the one to Mr. Walper.

testified that he told you that there was a problem with regard to Walterboro and the money that was due to Walterboro from Eon. Was that the substance of the conversation?

A That was the substance, yes.

THE COURT: He didn't go into what the problem was?

THE WITNESS: Not in detail, no.

Q His instruction was or suggestion to you -- I withdraw the word instruction, in deference of your position as general counsel and a lawyer -- his suggestion was to you to communicate with Mr. Coleman and arrange to meet with him in New York?

A Yes.

THE COURT: According to your testimony those were instructions,not suggestions?

THE WITNESS: Instructions, yes.

MR. FELDSHUH: Your Honor, I want to lighten the blow.

Q As you testified, Mr. Coleman and you attended at Mr. Anton's office. Was this by prearranged apointment with Mr. Anton, do you know?

A I think Mr. Coleman had talked to Mr. Anton.

Q And as your understanding was, as a consequence

of this talk this date was made for you to be at the plant on June 29, 1972?

A Yes.

Q You said you met one or two other people than Mr. Anderson. Do you recall who those other people were?

A I met Mrs. Anton and another gentleman, previously in passing, and I can't recall his name.

THE COURT: Mrs. Anton was at the office?

THE WITNESS: Yes, she was at the office.

THE COURT: Employed by the company, too, or did she just happen to be there?

THE WITNESS: I think it was explained she had certain administrative and clerical duties with the company.

Q You testified this conversation lasted one hour to two hours, something like that?

A Something like that, yes.

Q During the course of this conversation, did Mr. Coleman mention to Mr. Anton anything about a letter that Leonard had sent in May of 1971 about a bank account.

A I don't know that he mentioned a specific letter. He mentioned a bank account being established.

Q But nothing about a letter?

THE COURT: He said he doesn't remember.

Q That is as far as you can recall?

A That is correct.

THE COURT: Are you in a position to say that he didn't mention a letter or you don't know one way or another?

THE WITNESS: I don't know one way or another.

Q Who was carrying on the burden of the talk with Mr. Anton? You or Mr. Coleman?

A Most of the discussion was being done between Mr. Coleman and Mr. Anton.

Q And as far as your attendance was concerned and your presence was concerned, what did you say, specifically?

A What did I say?

Q Yes, sir.

A Primarily what happened to the money in this account and why wasn't it paid to Teledyne Continental Motors, where did it go, who wrote the checks. This was the theme of my conversation with Mr. Anton.

Q Sir, in response to each of those questions, what did Mr. Anton say?

A He didn't have definite answers about who wrote the checks, the details of the account but said that the money had been paid to pay bills and other creditors.

Q When he said that, was that -- when he replied to you in that fashion -- was that when you said to him something about the board of directors of Eon?

A Yes.

Q Didn't he give you a financial statement of the company for the period ending, I take it, 1971?

A Yes, he gave me an annual report or report.

Q Did you ask your question before or after he gave you that annual report?

A I don't recall.

Q You used the word, with regard to the money, as I recall your direct testimony, that the money, when you spoke to Mr. Anton, "belonged to TCM"?

A Yes.

Q That was the word that you used, is that right?

A Yes.

Q Mr. Anton, during the entire course of this discussion, the one or two hours, he never used the words "belonged to," did he?

A That was my word.

THE COURT: Did he challenge the word?

THE WITNESS: No, he didn't. He said he was sorry that it had happened.

Q You stated to his Honor, I think, in response to one ofhis Honor's questions, you used the words "That is true." Do you remember using the words "That is true" with regard to the board of directors of Eon knowing about this? Do you remember using that?

A I don't remember that phrase.

Q During the course of this discussion, were the names of any particular directors mentioned before you got the annual report?

A No.

Q You had mentioned the name, during the course of your direct testimony, Mr. Srybnik.

A Yes.

Q Had you heard that name before that meeting?

A Not before that meeting, no, sir.

Q From whom did you hear about that?

A My first knowledge of that name came from that meeting and I think reading the annual report, going over it and finding there was a debt owed, I believe, to Mr. Srybnik also from Eon.

Q That was the basis for your mentioning his name, sir, is that right?

A Yes.

Q You also used the words, with regard to Mr. Anton's statment to you, "he recognized this." Do you remember using that phrase, sir, with regard to the money?

A Yes.

Q His statement with respect to he recognized this, was in response to the fact that the money was not paid to Teledyne from this special account, isn't that correct?

A That it wasn't paid from the special account, and shouldn't have been paid to other people.

Q Shouldn't have been paid to --

A To other creditors.

Q And you had used the words this money shouldn't have been paid to other people? Was that your language at that time?

A Yes.

Q To this Mr. Anton, as I recall, replied it wasn't necessary because otherwise Eon --

THE COURT: He recognized this. I take it you didn't mean to imply he said, "I recognize this." You mean that was your inference from the way he reacted

to your statement. Would that be a fair statement?

THE WITNESS: I told him we were upset about this money being --

Q You used that language?

A Yes, and he should have paid us and the whole purpose was to protect Teledyne Continental setting up this bank account and this money was not properly used and he said "I know that," something to this effect "I'm sorry, but let's not go into history anymore. Let's go forward."

Q You understood thathe was sorry the money was used for somethng else and Teledyne was left there without being paid?

A Yes.

THE COURT: You are certain he used the words "I know that"?

THE WITNESS: Yes.

Q With regard to his knowledge, sir, when he used the words "I know that" with regard to his knowledge, was it I know the money hasn't been paid to Teledyne?

A I told him I thought it had been improperly used and paid to somebody else.

Q But he didn't say toyou in words or substance "I know that it was improperly paid to somebody else."

A He didn't say that statement, no.

Q And this comment that he made was in connection with several items that you had mentioned, the money, the account, and the use for payment of other debts and so on?

A Yes, taking the money out of the account.

Q Taking the aggregate of all the things you have mentioned?

A Specifically the point of taking that money out of a bank account and paying other people rather than TCM.

Q Thank you, sir.

THE COURT: What Mr. Feldshuh is driving at, that might have been your impression what he answered, and I have to decide which.

THE WITNESS: My questions were related to one subject, and that was the use of the funds out of this special separate account and in my displeasure with him in trying to find out what happened. That was the subject being discussed.

Q When you met Mr. Coleman in June, had he stated to you that Walterboro had received payments out of this special accounting aggregating $595,000, round figures?

Q When, if you recollect, did he terminate his employment relationship with Teledyne?

A I believe he terminated his employment in January of 1973.

Q You say a meeting thereafter took place at the offices of Eon Corporation, is that correct?

A Yes, that is correct.

Q What was the date of this meeting?

A July 17, 1972.

Q Approximately what time in the day?

A It was the a.m., in the morning.

Q Who were the people in attendance at this meeting?

A Myself, Spencer Letts, Allen Herbert, Nicholas Anton, James Leonard and Odif Podell.

THE COURT: Not Mr. Srybnik?

THE WITNESS: No, sir.

THE COURT: Who is the other fellow?

THE WITNESS: Odif Podell, who is the chairman of the board of Eon Corporation, I believe.

THE COURT: And who else?

THE WITNESS: Mr. Leonard and Mr. Herbert of our corporate staff.

Q Mr. Bank I may not have heard you

making the same ruling?

THE COURT: Yes.

MR. FELDSHUH: And my exception, thank you, sir.

Q Would you continue, Mr. Bank?

A I believe I said I asked Mr. Antonwhat happened to our money, and what had happened to the trust fund that had been set aside for us.

THE COURT: Did you use the word "trust"?

THE WITNESS: I used the word "trust."

A (Continuing) Mr. Anton said some of the money had been diverted out of the account.

Q Who used the word "diverted"?

THE COURT: If anyone?

A Well, diverted is my word and I used the word diverted. I can't say for certain whether Mr. Anton had said taken out or removed. Diverted is clearly my word and whether he adopted it I'm not sure.

Q The question I am asking is, the concept of monies wrongfully taken from the account,was this your inference from something Mr. Anton said or didn't say or did this statement initiate from Mr. Anton.

A No, I initiated the statement what happened to our money, and I believe his response was the money was

diverted out of the account.

THE COURT: Tha's the point. Did he use the word "diverted" or is that your recollection of the sense of it?

THE WITNESS: It is my recollection of the sense of what he said.

THE COURT: You can't remember the word coming out of his mouth?

THE IWTNESS: No, I can't. He might well have said took the money out of the account.

Q What else, sir, occurred during this meeting?

A I said -- well, at this point I was rather animated and upset and my words were something like "My God, how could money be taken out of our trust account, that is our money. How could something like that happen," and I used the figure like half a million dollars possibly had been removed.

He said, "We only took out $300,000, no more was taken out."

I said, "How could something like this accidentally happen?"

He said it was not an accident. He said the board of directors authorized this money to be taken

out of the account. He said it simply was not an accident.

I said "What happened to the money?" and he said, it was only $300,000. He swore -- he said "I swear we took no more than $300,000 and thatis all." I was using a larger figure. He said "No more than $300,000. We used it to pay taxes and other miscellaneous indebtedness or creditors."

And I said "Who was paid, who got this money?"

He said "I don't have the books and records here so I can't discuss that."

I said, "Where are the books and records?"

He indicated that the books and records were in California. I had been informed by Mr . Kotts that Mr. Leonard had told him that the books and records were in New York. When I spoke with Mr. Leonard he told me the books and records were in New York.

I confronted Mr. Anton with that statement of Mr. Leonard's and Mr. Anton said "Maybe they are in transit."

I told Mr. Anton I had been advised by Mr. Coleman he had heard they were in New York maybe as much as a month ago and Mr. Anton said "Maybe they're in the

basement, in a big box, many of them are in transit and I just don't have that information and I am not the one who would really have thatinformation."

I asked him who would have the information and he said there was a financial man who handled the financial matters for Eon. I asked who that was and he said Mr. Waller, and he said that Mr. Waller was not available, and that the money was paid out as he stated, a hundred thousand for taxes and two hundred for miscellaneous creditors.

Q Did anything else occur during the course of that meeting?

A Well, I said at one point, I indicated we still would like to see Mr. Srybnik, and Mr. Anton and Mr. Podell excused themselves and left the room. We were left with Mr. Leonard.

THE COURT: Had Mr. Podell said anything up to this point?

THE WITNESS: I don't recall him saying anything, your Honor, other than hi, how are you, the introductions. Mr. Anton was doing, it seemed like, most of the talking as far as I recollect. I turned to Mr. Leonard when they left, and I said --

MR. FELDSHUH: Your Honor, this is now of the

indicated the we could possibly set up a meeting the next day, and I think at that point Mr. Anton then walked us across the freeway somewhere and guided us to a cab stand or helped us hail a cab. That was pretty much the meeting except the discussion with Mr. Leonard.

Q Was there a meeting held the next day?

A July 18th in the a.m. we had a meeting at the law offices of Feldshuh and Frank. In attendance were the same people that had attended the prior meeting, with the addition of, I think, Martin Frank, Esq., and Simon Srybnik.

MR. FELDSHUH: Sidney Feldshuh was not there?

THE WITNESS: He was not there.

Q Were there any discussions concerning payment or non-payment under the subcontract at this meeting?

THE COURT: You have the same exception.

MR. FELDSHUH: Thank you, sir.

A Yes. We started out, I told Mr. Srybnik we were pleased to see him in attendance and I said that yesterday Mr. Anton had indicated that the funds had been diverted from our trust account at the direction and authorization of the board and consequently we

were now looking to the board for reimbursement.

Q And again, this was your language?

A I said this to Mr. Srybnik.

THE COURT: You used the words "diverted" and "trust"?

THE WITNESS: Yes, this is all my speaking. Mr. Srybnik didn't say anything, or I don't recall the response but Mr. Frank said this was sort of backward thinking and if we want to progress in the matter let's look to the future and see what we can resolve. Then, he again went into a discussion similar to the discussion that Mr. Anton had delivered and Mr. Anton again participated trying to offer some sort of equity participation in the company.

At this point Mr. Letts, who's not too animated, did get upset and said, "We have continued to tell you, we're not interested in that. If that's all we can talk about, we have nothing to talk about."

Q Mr. Bank, was there any further discussion on that day, concerning the special bank account or use of funds or anything like that?

A No, other than my initial statement, we sort of discontinued that line. They were not very responsive to that.

THE COURT: You don't remember anything Mr. Srybnik said?

THE WITNESS: Other than hello. We did ask him some questions but I believe Mr. Frank spoke most of the time and Mr. Anton.

Q On the occasion of the meeting the day before, Mr. Bank, July 17, I believe, at the offices of the Eon Corporation, was any discussion had as to the use of the monies that you alleged had been taken from the special account, that is, the use by Eon or American Marc?

A Yes.

MR. FELDSHUH: Objection. Already asked and answered.

MR. MITCHELL: This is prefatory to a question I am going to ask next.

MR. FELDSHUH: All right, I'll sit down.

A We asked what happened to the money, we asked where the monies went. Mr. Anton indicated, as I told you, the hundred thousand, and the two hundred thousand, we asked for a further breakdown on that. I asked if officers' salaries might have been paid, if Mr. Leonard was still on salary I believe at that time, as a consultant or employee. There was some continuing arrangement.

And he said -- the response was "We paid other creditors."

Q Was there any statement made by Mr. Anton indicating what would have happened had these diversions, as you call them, had not been paid?

MR. FELDSHUH: I object to that question as to form, your Honor. May I have the question again?

THE COURT: Would you read the question.

(Question read)

MR. FELDSHUH: "Would have happened." I submit the question should be did Mr. Anton say anything if the diversion had not been made, as he calls it. It's highly speculative.

THE COURT: Did Mr. Anton say what he thought would have happened. That's the question. This witness is not being asked to speculate. Mr. Anton may have been.

A When he originally told me that the money had been diverted from our account, that's when I reacted in a rather animated fashion and said "My God, how could that happen?" and his response was "We had to stay alive, that was our only choice."

The words were "We had to stay alive" or "We had to keep alive."

Q Was there any discussion had during the course of this meeting as to the rights of having Teledyne paid prior to any of the other creditors of Eon or its American Marc division? Do you recall any language said by any of the parties on this topic?

THE COURT: Which meeting?

MR. MITCHELL: The first meeting, your Honor, on the 17th.

A Well, when we talked about how this happened Mr. Anton was rather contrite. He admitted it had happened, he said he was sorry that it had happened, but again he said that he had no choice, that he simply had to stay alive. So, he did this to me, that the money had been taken out, and he indicated that we had a right to receive it first.

MR. FELDSHUH: I move to strike that as not responsive.

THE COURT: What words did he use to indicate that?

THE WITNESS: Your Honor, it's possible I could read something into this, but when I said we had a trust account, we were to receive this money, how could it have gotten out, Mr. Anton would say "I'm very sorry, we simply had no choice, we had to pay other

creditors."

MR. MITCHELL: I have no further questions.

THE COURT: I take it there is no redirect?

MR. MITCHELL: No, there is not, your Honor. I just wanted to direct your attention to the top of page 34, which I will read to you. This is the immediately succeeding questions and answers starting at line 2:

"Q That was not diverted?

"A Taken out of the account. Okay? And he may have said diverted. Okay?

"Q And he may not have?

"A He may not have. He acknowledged that a wrong had been committed."

MR. FELDSHUH: Just one question now.

Q The words that he acknowledged that a wrong had been committed, those are your words, are they not, as you testified on the deposition?

A No, but he said, "I'm very sorry."

Q That is all he said, "I'm very sorry," in that context; is that right?

A In what context?

Q In the context of some kind of --

THE COURT: I think you have established that.

MR. FELDSHUH: Good. Thank you very much. I'm finished.

(Witness excused.)

creditors."

MR. MITCHELL: I have no further questions.